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THE FEDERAL RESERVE SYSTEM—A RETROSPECT OF EIGHT YEARS

A PERIOD of eight years would not ordinarily be sufficient to furnish the basis for a conclusive judgment of any new banking organization established on a national scale. The First and Second Banks of the United States were both granted twenty-year charters. In neither did the issues which finally led to the refusal of an extension become well defined until much more than the first half of their life had expired. Nor was it possible, even at that time, to form a sound judgment of the effects which these institutions had produced. A review of the history of the Bank of England, and of that of the Bank of France, enforces the conviction that many years must elapse in the life of a highly organized community before conclusive and final judgment can be formed as regards the essential effects of a new banking system. Particularly must this be true in the United States, because of the fact that the Federal Reserve System was grafted upon a parent stem, and was not a new implantation. In these circumstances, an even longer time must necessarily be allowed to pass before the modifying influence of a new and vast financial organization, making itself completely felt, affords a basis for judgment.

These qualifying factors are thus stated at the outset of this discussion, in order that they may be clearly borne in mind by the reader throughout. Yet it remains true that the past eight years have been no ordinary period in the financial or economic, any more than in the political or social, life of the

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world. During these years, the Federal Reserve System, in common with other banking organizations, has lived through a succession of changes such as otherwise might not have been encountered in the course of a century. It has compressed into a short space many varieties of experience and, in a measure at least, has been able to profit by them, though not, of course, in the degree that would have been realized had these experiences been spread over a longer period. It is, at all events, a fact that a turning point in the history of the Federal Reserve System has now been reached; and that, within the next year or two, probably, conclusions will be arrived at which will in an important degree condition the future development and service of the new banking system. The period of war finance, so far as the Federal Reserve System is most materially concerned, has been brought practically to a close, and the question how the System can be fitted into a normal environment is now uppermost. These conditions warrant an effort to draw some general conclusions from what might otherwise necessarily be regarded as inadequate experience.

I

So varied have been the occurrences during this eight-year period, so unusual have been the political vicissitudes to which the country and the System have been subjected, and so extreme have been the oscillations between inactivity and demand for banking funds, that it would take much more space than any ordinary review could allow to furnish a complete outline of what has taken place. The best that can be done, therefore, is to state, with such supporting evidence as conditions will permit, the leading conclusions that have been reached as a result of experience with the Federal Reserve System.

First and foremost among the questions which presented themselves as matters of doubt at the inauguration of the System, was the problem whether the mere mechanism, or technical equipment, which had been prepared, could be esteemed satisfactory. As to this point a reasonably conclusive answer can now be given, and this answer is in a sense fundamental to the work of the whole undertaking. The doubts

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which were first formulated by those who opposed the enactment of the Federal Reserve Act related to the question whether a system composed of twelve independent units could be made to operate harmoniously, and whether the control of the system exerted through the Federal Reserve Board at Washington as a coordinating agency could be made to succeed. The doubt that was felt by many more or less unprejudiced observers related not merely to the question of the choice of personnel, but raised also the issue whether, with the very best personnel, the mechanism that had been established could attain its ends. It will not be denied that this mechanism has certainly been subjected to a very severe strain during the past eight years; and it will probably be conceded by most that the machinery has resisted this strain unexpectedly well. There has been little in the way of scandal or objectionable conduct at any Reserve Bank or branch bank. So far as is known, no financial irregularities have even been suspected. Apparently also, the management of the several banks has been at least reasonably efficient, and, in spite of Congressional statements to the contrary, not more expensive than the machinery of the member banks in each district. Nepotism and personal favoritism, which were jealously kept out of the Reserve Banks at the outset, have occasionally invaded some one or more of the units of the System, but probably in no higher degree, if as high, than is true of many of the member banks. The question whether a central reserve bank can be better than its members, or a government on the average better than the rank and file of the people, is one of perennial interest. There is good authority for the belief that neither of these conditions can very long be realized. At all events, the Federal Reserve banking system has undoubtedly been as well organized, as efficient, and as little expensive as the typical American bank. This perhaps is not the highest of encomiums; but it is certainly far higher praise than can be accorded to any purely governmental organization of recent times in the United States.

As for the Federal Reserve Board in Washington, the controlling mechanism of the System, it has from the start been superior in efficiency and sincerity to most similar government

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bodies. The appointing power had in the beginning decreed that it should not consist of great men, but it has certainly consisted of men who have in the main done their utmost and have worked single-mindedly with an eye to success of the enterprise. They have succeeded in conducting a great banking system upon a basis of working efficiency, justice and moderate expense. So far as their own organization is concerned, they have probably been, all things considered, the least expensive organization of any similar kind that the government has had under its charge. As to the policy of the Federal Reserve Board in the general operations of the system, more will be said at a later point. At this point, it is enough to note that the policy of the Board has usually been the best financial policy at the command of the government; it has almost invariably been superior to that of the management of the Treasury Department and, as already stated, has been carried out with an eye single to the success and welfare of the enterprise, and of the nation.

In the main, too, the system of branches established by the Federal Banks has proven at least reasonably efficient. Such elements of inefficiency as have been noted will probably be gradually improved, for the theoretical basis of the branch system is on the whole sound. So, taken all in all, it may be said that the operating mechanism of the Federal Reserve System, in spite of some elements of friction and with many unsatisfactory features, has commended itself to the thoughtful student and has shown its entire adequacy to the solution of the problems before it. This judgment, let it be again repeated, refers thus far only to technique, all matters of theory and policy being reserved to later sections of the present study.

It is certainly an achievement of some note that the Federal Reserve System has been able to inaugurate as elaborate and intricate an organization as it now has, to bring it to as high a state of perfection as it has now attained within the short space of eight years, and to have done all this at a cost inferior to the average banking costs prevalent in the United States and with no more than perhaps an ordinary amount of friction and difficulty.

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II

Passing from the basic question of mere technical efficiency, it is next necessary to confront a problem frequently mentioned at the time of the inauguration of the Federal Reserve System, as to which the utmost pessimism was expressed and in which no small part of the doubt and hesitation then felt has been shown to be warranted. This second question has to do with relations between the government of the United States and the Federal Reserve System. Only bare reference need be made to the well-known fact that for many years past it has been desired to take our banking system out of "politics." When the Federal Reserve System was created, it was assumed by friends of the system that this separation had now occurred, while critics and enemies asserted that the connection had been made closer and more intimate than ever before. Experience has shown that both parties had elements of right on their side, but the outcome, while a triumph for neither of the contesting parties, has been most unsatisfactory from the standpoint of the public.

The essential question at issue in this connection was from the beginning whether "political influence" could be excluded from the management of the System. This is at best a somewhat vague and loose way of expressing the question uppermost in many minds and calls for a more exact definition of the term "political influence." Many of those who had feared political influence in the past had apparently taken it for granted that that term implied the use of personal influence in the making of actual loans. There has never been the slightest reason to suppose that in individual matters of this sort any effort to influence the Federal Reserve Board was ever brought to bear upon it or upon the several banks in the hope of shaping action. In the broader sense, however, the term political influence may be used as indicating an effort to shape policies either in the interests of given classes or in the interests of methods which it was supposed would work more or less directly to bring about "prosperity" or conditions favorable to particular kinds of business. Viewing the term political influence from this standpoint, it must be admitted without qualification that

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the System has never been free of assaults of the kind referred to. Almost from the very beginning, there was effort to obtain action from the Federal Reserve Board which would result in an especially low discount rate designed to serve the interests of the agricultural classes, and at times this influence has been successful in forcing upon the System unduly low rates of the sort referred to. A striking example of the kind is found in the three per cent rate which was made at the outset for the purpose of enabling southern banks to offer exceptionally favorable terms to those who desired to discount cotton warehouse paper. During the war, the same kind of pressure induced the adoption of the well-known low rate designed to favor the discount of paper based on Liberty bonds. This latter may be regarded as a wholly abnormal episode, one which, it may well be hoped, may not occur again in the course of a lifetime. It may be viewed also, from the standpoint of some at least, as a more or less legitimate use of the power of the government. A judgment on these points would, of course, depend upon the opinion that was entertained as to the legitimacy of the methods of financing the war which were actually adopted. This is a large question and one which involves many collateral issues of national policy that are superior in importance perhaps to those of technical banking. It may, therefore, be omitted from consideration.

A different point of view must be adopted with reference to the pressure that has been applied to the System since the war for the purpose of controlling discount rates in the interests of agricultural classes or even of other elements of the business community. The thought of those who have urged such concessions in rates has no doubt been that the particular interests which they represented were so closely identified with the national welfare as to warrant the adoption of every kind of pressure with a view to securing exceptionally favorable treatment for them. Such an attitude is, of course, wholly foreign to the concept of a scientific banking system, and is undoubtedly to be classed as an exemplification of that "political influence" which has been so greatly feared in times past. Should such efforts be continued and extended, as there is reason to

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fear that they may be, the result might easily be the adoption of policies which would result in serious unsoundness in the banking system, and might operate largely to vitiate the entire structure of finance upon which it is founded. Coupled with amendments to the underlying statute itself, whose purpose it is to secure eligibility for long-term or non-liquid types of paper, this type of influence undoubtedly must be viewed as a danger of first magnitude; one which the Federal Reserve System has in nowise been able to avoid and which threatens its very existence.

It is fair to ask at this point whether a central reserve bank of the type which was often advocated before the adoption of the Federal Reserve Act would have been able to avoid this danger in a greater measure. Past experience does not indicate that such would have been the case, nor is there much in contemporary European experience to warrant any such belief. There are some factors in current political life indeed, which suggest that such an institution might have been the target for even more serious attack and that its work might have been vitiated in even greater degree than that of the Federal Reserve System. This is a matter of opinion or of conjecture. The fact remains that the Federal Reserve System has not been successful in avoiding the danger of "politics" as applied to its workings in the broadest sense, and at present has no prospect of such success.

III

As was almost unavoidable, a great deal of discussion about Federal Reserve System has centered upon unessentials. One such unessential matter has been found in the question whether individuals were or were not receiving unduly high salaries. Congress has devoted to this question an infinite amount of discussion which might well have been given to more serious subjects. The Federal Reserve System had at the close of 1921 about 12,500 employees and its annual expense of operation ran well up toward $36,000,000. It is not likely that any such sum of money was ever expended by any human institution without some waste. Neither is it probable that any such

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expenditure has ever taken place without the presence of some nepotism or favoritism on the part of sundry of those who are charged with financial responsibility. To assert that there has never been any waste in the Federal Reserve Banks either as to buildings or personnel would therefore be going a long way. The main facts in the case, however, are sufficiently clear. Careful statistical comparisons made between the salaries paid by Federal Reserve Banks and those paid by surrounding member banks in the several districts have shown that with but one exception—Richmond—these average salaries are distinctly below those paid by the larger member banks of the locality. If comparison be made on the basis of overhead expense per unit of business done, the comparison between the Reserve Banks and the neighboring member banks would be still more favorable to the former. It should however be noted that comparisons of this kind are probably not altogether fair. In European countries the contrast between central bank salaries and salaries paid by commercial banks is a striking one. The salaries of the managers of central banks are based upon the theory that the service is in a large measure a matter of public duty and that compensation is to be based mainly upon the standard prevailing in public employment rather than upon that allowed by the highest grade of private employment. We have not developed any such standard of public service or public duty in the United States, and if we are to buy the services of men of good standing in the financial and banking world at a rate which is commensurate with that which would be offered by commercial banks, it may be doubted whether the scale of salaries will ever be much lower than it is today. A careful investigation made by the Division of Analysis and Research of the Federal Reserve Board into the salaries paid by Reserve Banks to all employees receiving less than $5,000 per annum, showed that these employees were on the whole paid rather less than corresponding employees of member banks and that in many instances they did not receive what could fairly be called a living wage. It would seem, therefore, that with the exception of cases of nepotism or favoritism, the general expenses of the Federal Reserve Banks have been kept

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to a commercial basis and that the government has paid for the work about what would have been paid by commercial banking institutions. As for the building program of the Reserve Banks of which so much has likewise been said in Congress, final judgment will depend upon the opinion which is formed regarding the necessity of such a building program. It is doubtless true that the program of the Reserve Banks as now in process of being carried out has been gauged by necessities which were developed when post-war activity was at its peak. This activity has vastly fallen off and the building equipment of most of the Banks is undoubtedly ahead of their real needs. Bearing in mind, however, that they have taken over extensive Treasury functions and that other functions have been quite steadily transferred to them by Congress, the conclusion will doubtless be reached that the answer to the question whether a building program on the scale proposed was needed or not is a two-sided one. On the other hand, it is true in connection with buildings as in connection with salaries that where large sums of money are spent the elimination of favoritism is difficult and that the existence of isolated cases of such favoritism or extravagance is highly probable. This does not condemn the program as a whole, for an investigation of it seems to show that there is no reason to suppose that it has been more expensive either in the aggregate or per unit than a similar program carried out by others would have been. The real judgment of the case, as already stated, must depend upon the opinion to be formed as to the necessity of any such program. That it is ahead of immediate needs may readily be conceded without necessarily subjecting it to unduly severe criticism. That there have been instances of extravagant outlay in connection with individual banking aspects for which provision was being made need not be questioned. All of this has but little to do with the general question of propriety and expense involved in the matter. The point at which Congressional critics have been most prone to direct their attack is found in the fact that all surplus earnings of Reserve Banks over and above six per cent on the stock of members are to be paid to the government as a franchise tax. Any alleged extravagance

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in salary or in building is thus referred to as a kind of theft from the pockets of the people—a use of money which did not properly belong to the various institutions. For this point of view there is of course no warrant whatever. The Federal Reserve Banks have paid to the government in the course of their existence franchise taxes far in excess of those paid by foreign central banks and amply sufficient to represent an adequate tax on the System designed to compensate for what was practically a monopoly privilege of note issue. They have moreover performed services of the highest value without charge to the government in connection with the transfer of funds and the performance of fiscal functions. What the exact cash value of these services is cannot be precisely stated, but it has been very great. The Banks have therefore made a very handsome and more than adequate return to the government as tested by the past or present experiences of European banks. On the other hand, the stockholding member banks have received a very small return; for, while they have nominally had six per cent on the amount invested in stock, it must always be remembered that the Reserve Banks paid no interest to members on deposited reserves, so that, in a close comparison of accounts, one would need to reduce the six per cent actually paid to the members very considerably in order to get a fair estimate of what these members had earned. Of course it would have to be borne in mind that the Reserve Banks have rendered to members very valuable services (even when they were not rediscounting for them) through their action in maintaining stability and equilibrium in the financial world, but these of course are intangible elements in the situation. As for the legal aspect of the case, the Federal Reserve Board is of course vested with power to authorize expenditures and has approved the outlays of the several Banks for buildings and salaries and all other purposes. The government being the residual claimant of the assets of the Banks in the event that the System should be disestablished, over and above their authorized capital surplus, etc., the only question which is at issue in this connection is whether the Federal Reserve Board has or has not been wise in allowing the temporary diversion of funds into real estate

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and buildings to an extent that was perhaps in excess of present requirements. The problem thus raised is technical and there are many factors which affect it in one way or another. There need be no effort at this time to pass final judgment upon it. It is enough to say, as has already been said, that the System has amply paid its way and that its return to the government not merely in cash but in service has been very large.

IV

A more important point at which the efficiency of the Reserve System is often brought into question is found in connection with its membership. Starting with the concept of the System as a small compact body of banks, all to have national charters and hence to be under direct national supervision, the Federal Reserve Act, before it reached the statute books, had broadened into a measure which provided for the admission of state banks on condition only that they should comply in a rough general way with the requirements governing admission into the national banking system. For a long time after the inauguration of the System, it failed entirely to enlist the support of state banks or trust companies. There had been at the outset some feeling on the part of a number that they would do well to apply for membership, but this desire on their part was apparently the outgrowth of the opening of the European war and the disturbed conditions which accompanied that event. The disposition to accept membership soon disappeared and in its place there was developed an attitude of entire indifference, in some quarters of hostility. Such an attitude was overcome during 1917, partly through the adoption of a mandatory legislation which guaranteed to the state banks the right to withdraw from the System, and partly owing to the thought that our actual declaration of war with Germany created a situation which was recognized as likely to produce very serious financial strain, resulting therefore in a much greater disposition on the part of state banks and trust companies to get for themselves the protection which they could obtain through membership in the System. It was at that time predicted that, with the closing of the war, many of these institutions would withdraw, but

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they have never done so; and the activities of the Federal Reserve Banks have been devoted more and more continuously to the getting of new members. Although the System now includes some eighty per cent of the commercial banking assets of the country, the number of its state bank members is only about 1500 out of a general total of perhaps 20,000. Among these 20,000 many are ineligible owing to the form of their organization and probably a large majority ineligible because of the smallness of their capitalization. Yet there are still very many state banks which are either eligible or could easily become so but which are not members of the System. Does this fact of failure to draw within its scope practically the entire banking community indicate anything very definite with respect to the success or failure of the Federal Reserve System? Its success in increasing the number of its members and in drawing in the larger state banks of the cities has been hailed by many who judge success entirely on a basis of size or number as being the hallmark of prosperity. In fact, it is nothing of the sort and we may well question whether the System has not been seriously in error in admitting to membership a good many state institutions which have in fact been taken in. We may question still more seriously whether the System is not in error in endeavoring to obtain additional members, and we may ask with good reason whether in fact membership in the System is now too easily attainable and, finally, whether such membership today actually has the meaning that should be accorded to it. Doubtless membership in the Federal Reserve System is with many banks at the present time merely "advertising". It is true that, in order to give the System a prompt beginning, it was then deemed necessary to require membership on the part of all national banks. Yet national banks have at all times had the choice of remaining in the System or of shifting over to a state system if they chose. It is a fact that not more than about fifty per cent have at any time been discounters, while taking the whole number of members, it is probably true that a large percentage have never discounted at all, or at all events have done so only very sporadically. This, if it means anything, must mean that the System is not fulfilling the obli-

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gation which it ought to perform for its members, or else that its members are not of the proper kind. Probably both these statements have a basis. Conditions would be improved if different standards of membership were applied while the convenience of members might be much more greatly served than is the case at present. True it is, that not a few of the Federal Reserve Banks have exerted themselves to the utmost to acquire popularity with their members and that in so doing they have assumed functions and done work that by no means belongs to them, undertaking duties whose performance without charge might well be regarded by local member banks as bordering upon undue or unfair competition. True it is also that practically all of the Reserve Banks have been anxious to serve the convenience of members, and so far as they knew how have sought to help them. But of course their ability to help has been circumscribed by the general conditions upon which the System has been established, the regulations of the Federal Reserve Board, and a number of other factors. The Reserve System would undoubtedly profit greatly if it could go back to the original conception, namely, that of a small body of banks engaged in practically pure commercial business whose condition was at all times liquid and who were in position to make steady use of the facilities of the System. The great body of members which now, like an outer ring of satellites, surrounds the inner core of the Federal Reserve System, is too nebulous in its relationships to the Federal Reserve Banks, too much inclined to complain of failure to get from them a service which yields a direct profit, and too little disposed to adapt its principles to those of the Federal Reserve System itself or of the banks of the commercial centers in such a way as to obtain the maximum benefit of the membership. Taken all in all, the membership of the System today is unsatisfactory, and this unsatisfactoriness will not be overcome by increasing the number of members, although that is the direction in which all present efforts tend.

During the past session of Congress, it has been repeatedly urged that existing evils would be largely corrected if the smaller state banks could be admitted to the Federal Reserve

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System and given power to discount directly with the Reserve Banks. What good such power would do if these banks never possessed the paper that would enable them to do business with Reserve Banks is not clear. The truth of the matter is that what is needed is not an extension of membership but the development of a more active membership, and to this end the better adaptation of the System to the needs of the members. Such adaptation will of course involve, before it is fully successful, a far greater degree of activity on the part of Reserve Banks in the open market transactions for which the System provided. The great evil in the present membership situation lies in the fact that whereas Reserve Banks are cut off, or have cut themselves off, from much business except that which comes to them through the members, the latter do not perform any regular business with them and are disinclined to undertake such business except in cases of necessity. The Reserve System would be a far more effective part of our financial organization if it had a much smaller volume of assets and far fewer members but materially increased its activities. Let it not be understood that this end could be attained by releasing the smaller national banks from becoming members and confining membership, as was originally probably intended under the so-called Aldrich plan, to the relatively small number of banks in the cities. Mere reduction of membership gives greater power of control but does not change the character of the operations. It is a change in the latter that is needed and especially a change in the relationships between the Reserve Banks themselves and the member banks. The latter may be highly desirable members, even though of the smallest size, and they may be very undesirable even though of the largest size. The Federal Reserve Board, of course, has never had the power to alter or modify membership conditions except in so far as changes might result from administrative rulings which could be reshaped only within comparatively narrow limits. It has not, however, recommended to Congress any material change in conditions of membership and the subject has continued without scientific or thorough treatment, although experience has shown that, under present conditions, the System is little

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more than an emergency means of banking protection and that this character can probably not be fully modified without changes in its composition.

V

Perennial in the whole discussion of banking has from the start been the controversy whether a central bank was desirable for the United States. It was opposition to the central bank idea which, as has already been indicated, was responsible for the present structure of the Federal Reserve System. Yet the central bank idea is an outgrowth of actual conditions as we find them, and is difficult to dispose of by any mere mechanism of banking organization. The Federal Reserve System had an exceptionally hard task to perform in introducing its original type of organization. One of the difficulties, if not the greatest, which had to be encountered was found in the fact that so much of the country's banking strength centered around New York and in a lesser degree around a few other large financial centers. As the System has developed, nearly one-third of its assets belong to the Federal Reserve Bank of New York, the other two-thirds being distributed among the eleven other units in the System.

This preponderance of financial strength in one institution would naturally have given a somewhat "lopsided" development to the whole organization, but such lack of harmonious development has been considerably aggravated as a result of a variety of factors which, taken in the aggregate, have exerted a very profound influence. It is not intended in this general description of the results of eight years of experience to enter in any detail into the factors which have tended to give to the Federal Reserve Bank of New York the peculiar position which it occupies among Federal Reserve Banks. As has been said, the basis for the development of such a position was afforded in the very structure of American banking itself; but it should be added that little has been done to diminish or reduce even in some gradual way the disproportion which has existed between the different districts of the country. Let it be clearly and positively stated that in this remark there is no intent to

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intimate that there should have been conscious effort to impair or reduce the preeminence as a financial center which had been earned by New York or which had been developed as the result of natural factors. Due, however, to the peculiar character of our banking system prior to 1914 there were many factors which tended to shift country bank funds to New York. The centering of stock-exchange speculation in that city, the development of systems by which country bank funds were redeposited in large banks in New York, and in later years the system whereby an indirect control over "strings" of banks throughout the country had been developed by New York institutions, had brought about a more or less artificial condition of affairs in which a considerable quantity of country bank funds for whose transfer there was no natural warrant was steadily shifted from the country to the city.

This in itself was not a good thing. It is undoubtedly true that in every country which has a seasonal system of production, with heavy crop-moving demands at one season and slack business at another, there will be a condition in which a surplus of funds exists at many points for a series of months and a corresponding shortage exists at others. Such a condition is easily corrected under the branch bank system. Under our own system of independent and isolated banks, it could be properly provided for only through interbank accommodation such as was rendered by the reserve city bank system of the National Banking Law. Few students of banking can doubt that it would have been a very much better situation had our system of banking kept these funds in a liquid condition so that they could at all times be called home without question when they were wanted. Still better would have been the situation had there been assurance of local investment for a part of them, with the result that they were kept continuously at work in developing the business and industry of the various localities, instead of being sent to such localities only sporadically during the crop-growing and harvesting season. It has been often asserted that the small country bank system of the United States has greatly tended to the development of the smaller towns throughout the country and in some aspects there is

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truth in this contention. In other aspects, the argument has but little foundation, the use of such local country bank funds depending entirely upon the farsightedness of the country banker. In those towns or cities where such farsightedness was absent, or where the local banker preferred to speculate in stocks instead of lending in response to local demand, the country bank was often a kind of financial sponge which "mopped up" the spare cash of the community and sent it to banks at a distance to be employed by them in investment loans or in stock market operations.

All this the Federal Reserve Act provided a mechanism for remedying, in some measure at least. Such a remedy inevitably called for the hearty cooperation of the member banks of the different localities. Large city banks have however continued to draw to themselves the funds of country banks and to use them about as freely as ever in the stock market. Let it be carefully recalled at this point that legitimate dealings in stocks perform a valuable economic function and that there is no good reason why a stock market should not be properly and adequately financed. What is here said is not intended to convey the idea that there should be any unreasonable discrimination against the legitimate stock market, or any effort to "starve" that market or to deprive it of funds under proper conditions. What it is intended to say is that the working of the Federal Reserve System has apparently not succeeded in withdrawing from the stock market that overplus or surplus of funds belonging to banks and previously employed in stock-market speculation, which is a peculiar American feature of financial organization. The Federal Reserve System has permitted the rediscounting of paper at all times to go on in such a way that city banks discount for their country correspondents in other districts with the assurance that they themselves will be able to recoup by discounting paper at the Federal Reserve Bank of their district.

This system has undoubtedly operated against keeping at home the discount offerings of banks in those sections where the Reserve Bank rate was high. It has also tended to encourage city banks to put their funds into the stock market when-

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ever rates there induced them to do so, in the belief that if need be they could obtain accommodation from city bank correspondents which in turn would obtain what they needed from their local Reserve Bank. Due to the preponderating size of the Federal Reserve Bank of New York it was at all times possible for New York City banks to maintain this policy did they so choose. The fact is stated not necessarily as any criticism whatever upon the New York banks or upon the Federal Reserve Bank of New York. What was done was the outgrowth of the system under conditions which need not here be recapitulated. Nor is it necessary to inquire at this point whether the Federal Reserve Act itself gave to the system a sufficient power to correct the practices to which reference is here made. The point that it is desired to enforce is that the existence of the Federal Reserve System has not corrected this practice and shows no indication of so doing, and that so far as the writer is aware there has never been placed before Congress any plan for amending the Act in such a way as to make it more operative in this particular—assuming that greater effectiveness on its part was desired. In this particular then, which before the adoption of the Federal Reserve Act was by many spoken of as the feature of the financial situation which called most earnestly for correction, the Federal Reserve System has been largely without result. True, it has provided a bulwark against the recurrent suspensions and "panics" which were in large measure the outgrowth of the previously existing state of things. It has rendered readily available an emergency remedy which could be used to correct the immediate results of the evils referred to, but it has not, as many expected it to do, undermined or eradicated the evils themselves. Altogether, therefore, the establishment of the Reserve System must be looked upon as having been decidedly disappointing in its relation to stock speculation.

In registering this conclusion a reference is probably warranted to the post-war conditions in which Liberty bonds were employed as collateral at Reserve Banks for the purpose of obtaining funds which were then used in the stock market—this without any reference to the provision of the law which forbade

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the lending of funds for stock-market speculation. It may be said in reply that the Reserve Banks had no means of correcting the Liberty bond situation—that they were obliged under the law and regulations to lend freely upon Liberty bonds as collateral and that when the borrowers had obtained these funds it was entirely outside the power of the Reserve System to dictate the use that should be made of them. This is a technically good defense which it is not intended to discuss in this article, reference being merely made to the use of Liberty bonds in the way already referred to as perhaps the most striking, although fortunately a past, phase of the inability of the System to cope with the evil of excessive stock-market loans. The evil is one which in another form may recur at almost any time and the problem how to correct it remains unsolved in fact if not in theory.

All these conditions have naturally tended to stimulate the gradual assumption by the Federal Reserve Bank of New York of the position which it should not enjoy in a system organized as was the Federal Reserve System. We say this again not as any criticism upon the Federal Reserve Bank of New York or its members, but as a bare statement of the fact which has developed itself as a result of conditions. Acting for the other banks as a buyer and distributor of acceptances, as an intermediary between them and foreign banks, and in many other respects being continuously regarded and treated not merely by the Federal Reserve Board but by the government itself and in some measure by Congress as occupying a position quite different from that of the other Federal Reserve Banks, it would have been strange indeed if this bank had not accepted and performed the duties which were thus assigned to it.

Yet the assumption of such a position was and is undoubtedly against the intent of the Federal Reserve Act and is not warranted by the general sentiment of the community taking the country as a whole. The question how far the Federal Reserve System can succeed in developing a genuine live discount market in the several districts into which the country is divided, and the question how far it can thereby render the several divisions largely self-dependent, or, in so far as they are inter-

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dependent, how far it can make the Federal Reserve System the channel through which inter-district relations are effected, is still to be worked out. There is certainly no one who could reasonably suppose that the Federal Reserve System would ever become the only channel through which financial relationships between districts were carried on. Many, indeed the large bulk of, such interdistrict financial relationships are of a kind with which the Federal Reserve System has little or nothing to do, and probably never would have. The complaint of the present system is not found in the failure of the Reserve System to develop a monopoly of interdistrict relationships but is found in the fact that although the System has obtained a very large membership it has not succeeded in exercising all of those interdistrict functions which necessarily belong to it and must necessarily be exercised if it expects to render its full service to the community.

VI

Leaving questions of organization and management, and turning to those of a more strictly banking and financial nature, the fundamental problem presented by the Federal Reserve System in its scientific aspect was probably that of the establishment of a discount market and of leadership of our credit system by means of a varying application of discount rates. This indeed is, in many respects, the fundamental problem of all central banking. In considering it, the student should bear in mind that the eight years just passed have afforded only an unsatisfactory opportunity for a test of the capabilities of the System—this for the obvious reason that, during much of that time, war financing has been the predominant occupation both of the System and of the financial community as a whole. Nevertheless, some lessons at least may be learned and some conclusions drawn with reference to the Federal Reserve System in this aspect.

To one who reviews the discount-rate history of the Federal Reserve System, the outstanding fact in the case doubtless is that there has been no time when the System could be said to be really the leader of the market or be able to make its dis-

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count rate "effective" for any considerable period. For the first two years after the organization of the System, the banks of the country were too well provided with funds and too little inclined to resort to the Reserve Banks for accommodation to permit the discount rates of the latter to be of any serious importance. The Federal Reserve Board itself, in its various annual reports, has from time to time called attention to the fact that only a few months after approximately the beginning of 1917 had the System begun to enjoy a real influence upon the credit situation, and that this influence was promptly broken and neutralized by the advent of the war in the spring of that year. It was not until the war was over and had been succeeded by a period of inflation which had brought the country close to disaster, that the discount rate again began to play much part in the control and direction of credit. There was perhaps an interval of a few months in which the effect of higher rates made itself an influence of moment in the financial market, although even during that period the definitions adopted by the Federal Reserve Board with regard to commercial paper, the maturity of such paper, the Board's attitude on questions of eligibility and the like had a much greater influence. "Deflation", which set in as a result of world-wide revolution in demand and prices, largely threw the System out of alignment with the commercial credit market, and once more rendered its rates relatively ineffective. Today, they have practically no relation to, or effect upon, current short-time commercial rates. Reviewing the whole experience and concentrating attention upon the two periods of a few months each, during which the Federal Reserve discount rate was a real factor in current finances, the conclusion to be drawn must be very adverse to the success of the System as a leader of the market or as a moulder of credit. Probably the prime reason why the discount rate has not been more effective than it has been is to be found in the fact that the System's accommodations were at all times made through member banks and depended upon their applications. Remembering that it has seldom been true that more than about fifty per cent of the members were ever rediscounters at any one time, it will be

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apparent that the System has never been in position to exert a real power over credit through its rediscounts, save in a purely indirect way. The Act itself had foreseen that such would be the case and had accordingly provided for open-market operations, but the provision to that effect was sadly vitiated in the course of the debate, such operations being at length confined to two-name paper—an outcome which necessarily would have handicapped the Reserve Banks in any effort to become an important factor in the open market. They have not, however, employed even the power that was left them in any satisfactorily thorough way as regards open-market transactions. The volume of these transactions has always been small relatively speaking, and the conditions under which they have been carried on have been such as largely to prevent much influence from being exerted through them either upon the volume of credit or the rate at which it was sold. Various reasons for this kind of inactivity could perhaps be assigned. Had market conditions remained normal, and had the System gradually come into its full development free of the modifying influences of the war, more progress could have been made.

The influence of the member banks, however, has been against any such activity on the part of the Reserve Banks. As a result of this state of things, the Federal Reserve banking system has undoubtedly become in some measure what the early banking-reform movement sought to build up, but what the Federal Reserve Act did not aim at—an emergency banking system. Its emergency character is seen in the extreme fluctuations in its volume of transactions which have at times in the short space of a year increased as much as three hundred per cent and at other times shrunk about two-thirds of their maximum amount. No such extreme fluctuations are to be seen in the European central banks. These latter banks have developed a continuing business. They are regular participants in the money market—leaders and formers of financial conditions, instead of being subservient to them. The illustration so often used during the banking-reform struggle wherein a central reserve bank was likened to a reservoir of water used to put out fire was thoroughly misleading and erroneous. Foreign

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central banks are not comparable to reservoirs suddenly drawn upon to put out fire; they are far more nearly to be compared to fireproof construction whose purpose it is to prevent combustion. But the inability or refusal of Federal Reserve Banks to participate actively in open-market transactions has prevented them from becoming leaders in the market and regular participants therein, and has retained them in the position of emergency institutions.

In these circumstances real influence over the discount market could hardly be expected. Since the extent of their participation in financial operations is largely outside of their control, depending as it does upon the rediscount activities of the member banks, the effectiveness of their rediscount rates must of necessity at all times be greatly limited. Real effectiveness can be attained only under very peculiar conditions. For this reason the work of the System in checking inflation, effective as it may be at times, is wholly ineffectual at others, while in strictly normal times the System can have but little influence in controlling or directing the course of interest rates save through very roundabout channels.

VII

Closely connected with this failure to develop as a financial leader and with the unsuccess in building up an open market in which the "bank rate" would be "effective", must be noted the ill success that has been had in stimulating the growth of liquid paper in the American market. It was recognized from the inception of the Federal Reserve Act that much of the current talk and agitation about bankers' acceptances was without foundation, and the original act wisely limited these acceptances to genuine "salt water bills", growing out of actual oversea transactions. While there was and is probably no better paper in the world than the soundest and most liquid elements of our domestic single-name paper, a very large proportion of such paper is non-liquid or at best only semi-liquid, while it affords no definite means of indicating to the general buyer the precise extent of its liquidity. There was also full recognition of the fact that a development of domestic acceptances based upon

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warehoused commodities would be of no benefit whatever, the warehousing of commodities, indeed, being in many cases good evidence of the non-liquid character of bank paper based upon it. No good purpose could be served, it was thought, by merely converting non-liquid paper from the single-name to the double-name form. It was with the real nature of credit and not with the form in which it was embodied that the banking system must deal.

These views did not long hold their own, but under the stress of war and the specious representations that broader acceptance powers would result in more elastic means of financing the contest, Congress determined to enlarge the acceptance power in a variety of ways. It increased the percentage of acceptances that were to be issued, it permitted them to be made as a means of providing "dollar exchange" in foreign trade, and it also provided for domestic acceptances. The Federal Reserve Board has gone further than Congress ever apparently intended, and has practically removed all restrictions from the making of acceptances. In these circumstances, the acceptance movement has turned out to be only a very partial and limited success. The Reserve Board first recognized two types of acceptance—the bankers' and the commercial, or trade, acceptance. The latter speedily developed into a type of rather secondary accommodation paper and has on the whole defeated itself. No one now has much to say about trade acceptances. The movement in their favor reached an early climax and then sank into discredit. The bankers' acceptance had a far more hopeful future, but by methods which would require for their explanation far more detailed treatment than is here possible, it too has been misused and abused.

A scathing report prepared by a committee of bank examiners and filed with the Comptroller of the Currency in the spring of 1922, lists abuses of the acceptance power which, if they should be continued on the same general scale therein indicated, would permanently discredit this type of paper. It is not strange that, in such circumstances, the attempt to popularize the acceptance and broaden the holding of such paper has been unsuccessful. Its unsuccess has meant that there was

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corresponding unsuccess in the provision of a thoroughly liquid body of bankers' bills which could be offered upon the market as a means of currently investing fluid funds.

Too much confidence should not be placed in mere figures relating to the growth of the acceptance in the American market. Nevertheless it is worthy of note that the volume of acceptances afloat here, including non-member issues, was at one time estimated as high as one billion dollars, since when it has fallen away to about four hundred million dollars. This slackening in the volume of acceptances is partly due to the changes in business demand that have occurred, to the reduction of foreign trade, and to other circumstances which would have operated in the same way no matter what the development of the acceptance had been. But it is undoubtedly due to the disposition of the country bank to use its funds in a different way rather than to invest them in acceptances. It has never been possible to raise the number of accepting member banks in the entire country above four hundred and the number has often been far below that. How far the process of accepting can be more widely diffused will probably remain a doubtful question for a long time. Thus far, however, it seems clear that but little success has been developed in making a market for the country bank acceptance. What has been done has been to place on the market the acceptances of large city banks in the belief that the country institutions would buy them as an investment instead of putting their funds into the stock market. The proposition has been essentially one-sided—a means of obtaining more funds for the use of city banks.

It may well be doubted that this type of acceptance development will ever succeed in producing the basis for a discount market. Certainly it is not a condition which exists in Great Britain; although it should be added that in that country there is an entirely different type of banking structure, the basis of Great Britain's banking system being found in a small and increasing body of institutions, all of considerable size and many of them very large, which establish branches throughout the country. There is therefore no country bank problem of the kind that exists in the United States. How to adapt ourselves to

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the peculiar conditions of the United States in evolving a discount market is a question which has not yet been satisfactorily dealt with and, it should be added with regret, on which but little work seems to be in process.

VIII

One object which was set before the Federal Reserve System at the outset of its organization had been long held in mind during the early years of banking discussion. It was the question how to obtain a flexible or elastic note circulation. Indeed this question had often been discussed to the exclusion of other more serious matters and the power to issue notes had by many been erroneously identified with the lending capacity of the bank. It was a fact that the Aldrich Bill (National Monetary Commission Bill) which had preceded the Federal Reserve Act, had been built up largely around the idea of a flexible note issue. Some writers who have reviewed the history of the Federal Reserve System have been disposed to place great emphasis upon the problems of note issue, pointing out that in the beginning the concept which was adhered to by the System was that of providing a currency which should expand and contract as business needs expanded and contracted. On this point, as on most others, the Federal Reserve System has had to suffer from the character of the times upon which its organization fell and has had to reconcile itself to what it could, rather than what it would, do. Strictly and carefully framed, the original provisions of the Act were intended to prevent the issue of notes save as the result of the discount of actual bona fide commercial paper. This provision was speedily qualified through the development of evasive practices, prevailing throughout the System with the knowledge and consent of the Federal Reserve Board, which soon made the original provision only a handicap and led to its withdrawal. Its place was taken by an amended section which was intended to permit the issue of notes to take place practically on a gold-certificate basis. It would be an interesting matter of speculation to inquire how much this provision in and of itself would really have modified the original law had it been left to work without interruption.

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The entry of the United States into the war, however, and the hysterical effort to "conserve" gold soon led to a condition of practical suspension and to the concentration of gold and gold certificates in the hands of Reserve Banks. An immense expansion of Federal Reserve notes took their place, and when to this great outpouring of notes was added the large increment due to the artificial forcing of Federal Reserve Bank notes into the circulation to take the place of retired silver certificates, it was believed by more or less careful students of the currency situation that, as a result of these changes, the note issue of the System had become quite inelastic. This view undoubtedly prevailed until the beginning of the year 1921. Experience since that time has shown the capacity of the note issue to contract as prices fell and demand for circulation was reduced. It is a fact that the theoretical elasticity of the new note currency has been entirely vindicated, or in other words, if we eliminate from the entire volume of note currency in circulation in the United States all that part which represents gold or gold certificates held in store and all that part which has been issued to replace Treasury certificates or greenbacks, we shall find that the remaining volume of Federal Reserve notes, based as it is upon commercial paper, has shown in very considerable measure the attributes of elasticity which it was desired to secure. But this theoretic vindication is far from representing an actual accomplishment such as was hoped for when the Act was first framed. Eventually it was hoped that gold certificates would be retired, and the gold trust funds of the country, in so far as released, would be deposited in Reserve Banks; and, in so far as turned over to the public, would be used by them to the extent that they were needed in current circulation, the remainder then being deposited with commercial banks of the country and through them in some proportion at least with Reserve Banks. The greenback, it was likewise hoped, would be retired through the use of the earnings of Federal Reserve Banks, while of course no such artificial increase of Federal Reserve Bank notes as later occurred was ever thought of. Had matters worked out in this way, and particularly had the retirement of national bank notes at the rate provided in the original Act proceeded,

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we should now no doubt have been well on toward attainment of the ideal of a single uniform currency, provided by Federal Reserve Banks, resting upon an adequate gold reserve issued only for commercial paper, and expanding and contracting as business requirements made it needful. That object has certainly not been accomplished; and, with things as they now stand, there is little reason to believe that it will be at any time in the near future. Conditions working against it are today perhaps more adverse than at any time since the inauguration of the System; so that, all told, we must conclude that the success thus far experienced in the provision of a note currency such as was anticipated has been limited, not through any fault of the System itself, but by reason of the exceedingly difficult conditions to which it was subjected from the outset.

IX

It is of course deeply to be regretted from one standpoint that during its early years our Federal Reserve System should have fallen upon such disturbed times. Organized during the first year of the European War, its whole purpose and object has been lost to sight as a result of the urgent requirements of war financing, and the history of the System has necessarily been very different from what it would have been in other conditions. Not only has it become an emergency banking system but from the very first the decisions to be taken upon essential issues have been consciously distorted and misshapen as a result of war requirements whose purposes have not always been obvious to the outsider, and whose objects when gained have sometimes proven to be of doubtful advantage. International considerations of a wholly unprecedented character have intervened to modify the System in its reserve aspects and the vigilance of Congress, such as it was, has been largely relaxed because of the war, so that unwise amendments have been from time to time adopted. In happier times and with a more normal condition of the financial world, better results might have been accomplished, and yet this always is a two-sided matter. Had it not been for the war, there is no slight reason to expect that reactionary influences would have prevented the

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System from ever attaining full growth, would have kept it in financial swaddling clothes far beyond the time when it should have been free from such restriction, and would, in short, have succeeded in preventing the organization from showing what it could do. As against such a condition the System has, however, had an unusual opportunity of knowing its strength and has exhibited it. This was well, because the experience thus had constitutes an example which can never be erased and to which in later years reference will constantly be made by those who believe in the development of a strong central banking system actuated by considerations of public welfare. As it stands there has been a practical break of eight years in the discussion of banking from the scientific standpoint, in the United States. The period since 1914 has been so disturbed and uncertain as to permit of little in the way of suitable policy and to compel very great modifications of thought on the part of financiers and publicists. But they will yet develop a more thoughtful and scientific attitude toward the whole problem, it may be hoped, and, if so, the movement toward sounder banking will at least have been assisted by the illustrative experiences of the past eight years. Not least among these has been the demonstration of ability to perform the fiscal functions of the government on a scale and with an efficiency not previously thought of. Getting rid of the evils of the old subtreasury system has been one of the important benefits bestowed as a result of the adoption of the Federal Reserve Act. Absence of much discussion of this point and cessation of scientific banking analyses in large measure have of course retarded the development of thought and there has been a growth in many parts of the country of wholly unsound and dangerous "soft money" and "fiat credit" fallacies. How soon or by what means these can be eradicated and the experience of past years used to our benefit is still uncertain.

Bearing all these factors of the banking problem in mind, however, we may now proceed to sum up some of the chief conclusions which suggest themselves to the mind of the student of our banking history during the years 1914–22.

Outstanding among these conclusions is the fact that the

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Federal Reserve System has not accomplished the main objects for which it was intended and that in so far as it has achieved success in any direction it has become unpopular. By the side of this first and pessimistic conclusion must be placed the fact that the System has rendered far more distinctive services to the country within a short period of years than its inaugurators had ever any right to expect. It has not only attacked with considerable success and skill a good many of the problems which it had originally set before itself; but it has also grappled with a set of issues entirely unforeseen at the time the Act was adopted, and in rendering to the government distinctive service during the war has proved its entire adequacy to the solution of unprecedented problems developed during a time of financial trial such as the world had never before seen. Like many an individual, the Federal Reserve System has been great in emergency but commonplace in the ordinary business of existence. So, when the emergency produced by war had passed the failure of the System to develop a discount market or to exert as independent and courageous an influence as it should upon the distribution of credit has been notable.

It is perhaps not too severe a criticism to say that the System has shown but little constructive ability, and that while it has carried out some of the ideas embodied in the Federal Reserve Act it has left others entirely undeveloped, acting upon them only slowly and reluctantly as circumstances demanded. One striking illustration is afforded by the provision of the Federal Reserve Act whereby the funds of the government were to be transferred to the Reserve System. In this respect a nominal compliance was at first made but in such a way as to amount to nothing. It was some time after the opening of the war before real compliance with the terms of the Act was effected and then only because circumstances compelled the Treasury to permit it. Not until after the war itself was over was the useless old subtreasury system abolished. There are many other points at which a like attitude of resistance and reluctance has been exhibited, and while there are doubtless some who would term this attitude conservatism and praise it as such, that point of view on their part could not be defended upon other

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than merely tactical ground. Noteworthy in this connection is the fact that among those who most retarded the development of the Federal Reserve System and its introduction of forward-looking ideas, a high place must be given to the politicians who at first put themselves forward as radical reformers. It was Secretary McAdoo who was most reluctant to effect the transfer of the government funds to the Reserve Banks and Comptroller Williams who was slowest in accepting the mandates of the Act concerning the relations between Reserve Banks and their members by giving to them the credit data concerning member-bank conditions which they needed in order to build up their files. It is the supposedly popular or democratic members of Congress who have been most abusive toward every forward step in the process of popularizing the banking system and who have been most inclined to take the part of special interests. Of this latter disposition a striking example is seen in the effort to restrict the plan for the collection of checks at par and to defend the views of the small "tollgate" banks of the South which desired to be left free to charge as exorbitant rates of exchange as they saw fit.

While thus the Federal Reserve System cannot lay claim to complete success unless success is measured in terms of building operations, salaries and assets, yet from that point of view its success is eminent and undisputed. It has made a place for itself not only in the country but in the world, and is already a model or pattern upon which various foreign banking systems have been shaped. It has succeeded to this extent because its original purpose had in view the public interest and requirements and because it was without regard to the special welfare of those interests which had vitiated the earlier proposals for banking legislation. In proportion as the System slips away from these ideals and tends to stereotype itself upon existing lines and to content itself with self-satisfied advertising and approval of its own measures and acts, it will be likely to become less and less valuable to the community. It has already served its principal purpose under the existing form of organization and the time has come when there should be an effort to bring it back to its original standards and to provide the basis for

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better and more public-spirited organization of our banking system. The danger in inaugurating such a movement is now, as always, that it may be taken possession of by selfish politicians and business men who in the pretence of representing public welfare desire only to possess themselves of the "loaves and fishes" and to advance the interests of sections of the community.

Enough proposed legislation amendatory of the Federal Reserve Act is now pending in Congress to destroy its purpose wholly, and among this vast array of bills few or none embody the amendments which are now so much to be desired and so essential if the System is to maintain a progressive attitude. The Federal Reserve System has done well and has deserved well of the community; it has been an emergency system actively and effectively functioning in a time of almost unique emergency. What it will do, how it will act, and what will be the attitude of the public toward it from this time forward remains to be learned. One thing is certain: It is in unstable equilibrium and cannot be expected now to maintain its present position. It must go forward or consent to lose ground, perhaps ultimately to suffer the fate of other central banks which in the past were destroyed by demagogues.

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AN EIGHTEENTH-CENTURY ELECTION IN ENGLAND

HISTORIANS have been prone to speak of the political corruption in the eighteenth-century representative system, but in reality little has yet been done to study in a minute way how the system operated after the victory of Parliament over the Crown in 1688. A careful examination must be made of each individual election before we are able to generalize with any safety as to the functioning of the English electorate prior to the Reform Bill of 1832. Basil Williams in a suggestive article on the election of 1734 has indicated what excellent work may be done in this field.[1]

No election in the first half of the century is more interesting or more significant than that of 1710, and it is, without doubt, the most important one held under the provisions of the Triennial Act of 1694. A typical election it certainly is not, for the public interest was too intense and the interests at stake too momentous for it to take the usual course of the average election. It illustrates, however, all phases of activity in English elections, and the contemporary records give us far more detail of even the ordinary happenings of a canvass than would have been the case had it aroused less interest among the people of the time.

This paper is an attempt to describe the final success of Robert Harley's schemes against the Whigs; to note the activity of the queen, the clergy and the moneyed men in political affairs; and at the same time describe how one important election of the early eighteenth century was carried on.

English political parties did not become truly significant until after the Glorious Revolution, and not until it had been well established that ministers should depend upon the House of

[1] "The Duke of Newcastle and the Election of 1734", *E. H. R.*, XII, p. 448. The article was based almost entirely on the Newcastle Papers found in the British Museum.

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Commons for their support did elections become a vital part of the machinery for governing England. William II had tried to rule England by means of bi-partisan ministries, but soon yielded to the political necessity of a Whig ministry, which, on account of its arrogance, he was compelled to dismiss in favor of the Tories; who in turn had to give way before a Whig House of Commons elected just before his death. Queen Anne, also, attempted to stand above and between parties, but in spite of her Tory sympathies, she had to accept a Whig ministry even at the price of dismissing Harley, her favorite secretary of state. The significance of these facts in determining the importance of political parties has usually been overlooked, whereas if they are taken in conjunction with the election of 1710, their meaning is unmistakable.

Before discussing the election itself, it is advisable to ascertain the exact political situation which brought it about a full year before it would naturally take place in conformity with the Triennial Act. The election of 1708 was a decided victory for the Whigs, and more particularly for the junto, the group of five who controlled that party. The queen disliked the Whigs in general, and the junto in particular, as was manifested by her opposition to admitting two of their number, Lord Somers and the Earl of Sunderland, to her cabinet council. As a result, after Harley's dismissal, Anne soon began intriguing against her ministers and secretly supported her former secretary of state in his efforts to drive the Whigs from power.[1] The ministry was by no means invulnerable; the Sacheverell trial had focused all the wrath of the Highfliers against them; the nominal head of the ministry was Godolphin, a moderate Tory, and its strongest supporter the great Duke of Marlborough, whose party affiliations were, to say the least, ambiguous. Moreover, the duke's popularity with the queen had measurably declined on account of his ambitious desire to be made captain-general for life and to control all important military appointments. Furthermore, his termagant spouse, the beautiful Duchess of Marlborough, in the early months of the reign

[1] D. Defoe, *An Account of the Conduct of Robert, Earl of Oxford*, p. 16.

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the bosom companion of Queen Anne, had passed definitely into political oblivion after a tearful, but ineffective last interview with the queen. But incomparably worse than all this, Anne's confidence was now in the keeping of Mrs. Masham, who was in closest touch with Harley. Worst of all, Sunderland, the most influential son-in-law of the Marlboroughs, was summarily dismissed as principal secretary of state a short time after Lady Marlborough's stormy scene with Anne.

Sunderland's dismissal was a straight challenge to the Whigs and more especially to the junto, to which he belonged. For a moment the Whigs seemed paralyzed, but they soon assumed the offensive and brought to their aid several wealthy and influential nobles, representatives of the Bank and the moneyed men of the City, as well as the envoys of Holland and the Empire, all of whom waited on the queen to protest against Sunderland's dismissal as unwise and unsafe at that particular juncture in the war with France. Their joint protest had no effect beyond exasperating Anne at their presumption, although it is indicative of the fundamental interest of the financial men in prosecuting the war under Whig direction, and their desire to ward off a new election at a time when the English masses were already weary of war. The skill with which the queen met the representations of these men points unmistakably to the fact that she was far from being the figurehead in politics which she was formerly represented to be. Her success in forestalling any overt and organized effort on the part of the Whig leaders also shows that the junto was slowly dissolving under the attacks of Harley and his supporters.

The credit of the government continued to sink slowly after Sunderland withdrew from the cabinet. Harley, however, gained not only the assistance of Godolphin, but the support of the three powerful dukes of Somerset, Newcastle and Shrewsbury, which probably checked a panic. Although a run on the bank was thus averted, the queen found it desirable to gain the aid of some of the leading Whigs, notably Halifax, Somers and Wharton, to arrest the continued decline of stocks. Her conference with members of the junto did not gain the cooperation of the Whigs but it did assist in adding to their

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general demoralization. Moreover, it materially increased the chronic timidity of Godolphin, who began to fear for his office. Harley gained confidence, at any rate, from the attitude of the moneyed men and waited for the first suitable opportunity to compass the downfall of the head of the ministry. Sir Thomas Hanmer's refusal to accept a place on the treasury board delayed Harley's plans somewhat, although the lord treasurer really invited his own disgrace by his sulkiness toward the queen, whose ire was so aroused that she sent for his staff of office, and placed the treasury in charge of a board of commissioners, of which Harley was a member. The latter was also made chancellor of the exchequer.

Thus did the queen challenge even more directly the power of the Marlboroughs and the Whigs by dismissing the man felt to be indispensable in the prosecution of the war. The stand of the Whigs was half-hearted and they disarmed Marlborough by asking him to remain at the head of the army. As the stocks began once more to fall, they hoped the queen would be compelled to recall Godolphin, but they failed to carry the fight to Anne and Harley. The danger of a financial crisis was sufficiently great to lead to a session of the cabinet council, and at the same time the treasury board assured the Bank that they would in no way change the plans for financing the war. Had it not been for repeated reports that Marlborough would be superseded in command of the army by the Elector of Hanover, the moneyed men and the foreign diplomats might have been satisfied with these precautions. As it was, however, both groups feared lest England might cease to interest herself actively in the war and make overtures of peace to Louis XIV.[1]

After Godolphin was forced out, it was only a question of time until others would follow him, while the possibility of an election seemed more imminent with each passing day. The essence of Harley's schemes lay in their secrecy, and he contrived at the same time to keep his opponents in the dark as to his exact plans and win over a few of the more influential of them. Meanwhile, do what he might, Harley could not hope

[1] For more detailed information on these points, see the author's article in Political Science Quarterly, June, 1921.

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to go far with a Whig House of Commons in steady opposition to him, so he sought the first suitable opportunity for holding an election. When all his plans were ready, and after repeated adjournments, Parliament was dissolved late in September with the writs returnable two months later. Within a few days after the dissolution the ministry became wholly Tory:[1] Harley was for all intents and purposes prime minister, and perhaps the first real prime minister in England; Henry St. John, his friend, and one of the most brilliant and versatile men of his time, became principal secretary of state; and the Earl of Rochester, Anne's uncle, succeeded Somers as lord president.

To change a ministry so rapidly and completely in those days was revolutionary, even in times of peace; but the step was much more significant because it was carried out in the midst of a war that was being successfully conducted by the ministry in power. Anne's move was at least daring, and perhaps the over-anxious Tories caused her to go further than she liked, as she doubtless feared the effect of the ministerial change upon the peace negotiations even then under way. The effects were scarcely visible in foreign affairs, however, and in domestic circles the alteration caused little comment, since everybody was concerned in the outcome of the approaching elections. Should the Whigs win, Anne and her henchmen must give way, with the possibility that Harley might have to face impeachment. Of all this, no one was more conscious than the Tory leader himself, who bent every effort to win the election. Indeed, he had been active in the constituencies for some time, whereas the Whigs did not bestir themselves until late in September. Although some of the Whig leaders had long been aware that an election was certain, few realized either the importance of the issues or the strength of the Tories. In 1709 they had been so confident that they permitted the Tories in many places to choose the sheriffs, who now became the returning officers for the election.[2]

[1] Macpherson says (*Hist. of Gr. Brit.*, II, p. 464), that "the Revolution itself . . . had not made such a total change among the servants of the Crown".

[2] *Wentworth Papers* (J. J. Cartwright ed.), p. 135; the *Observator*, IX, pp. 42-7. See also *ib.*, p. 67.

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English affairs were rapidly approaching a crisis as the pollings began. The war so far had been on the side of the allies but to some it seemed that England would have won the war only to lose the peace, should the Tories gain the election. The position of the House of Hanover was in danger inasmuch as many influential Tories were favorable to the return of the Stuarts. The leading financiers of England feared the possibility of a repudiation of the debt if their Whig friends were not in the ascendency in the new House of Commons. Moreover the Whigs had been responsible for the Union with Scotland and for the policy of toleration toward Dissenters, and these gains might well be lost through a Tory triumph. In short this election was at once a contest between the landed gentry and the moneyed men; between the supporters of the Hanoverians and the Stuarts; a test for the prerogative and the doctrine of passive obedience; a conflict between the High Church on the one hand and the Low Church and Dissenters on the other; and, finally, upon the outcome of the election probably depended the future administration of the war and the permanence of the Scottish Union, inasmuch as the Tories had neither sympathized with a vigorous prosecution of the Continental war, nor been very enthusiastic over the Union.[1]

The Tories were neither so blind to the importance of the election, nor so supine as their opponents. Not all the Whigs were lethargic, however. Marlborough had long sensed that a dissolution was inevitable, and suggested plans for general elections, but even he felt sure of a Whig victory. Godolphin, "Old" Horace Walpole and Sunderland were aware of the possibility of a dissolution, but all were confident of success.[2] Some who had taken a leading part in Sacheverell's trial considered it useless to contest any seat; others, like Wharton,

[1] *Other Side of the Question*, pp. 171-3.

[2] *Coxe Papers* (Br. Mus.), XXXIII, f. 102; *Lansdowne MSS.* (Br. Mus.), 1236, f. 247; W. Coxe, *Memoirs of the Life and Administration of Sir Robert Walpole* (1798 ed.), I, p. 278, II, p. 32. Earlier, however, Godolphin urged the Whigs to plan or the elections. *Seafield MSS.* (Hist. MSS., Com. Rept.), p. 208. James Craggs was pessimistic throughout, expecting an overwhelming Tory victory. *Coxe Papers*, XXXIII, f. 123.

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retired to the country, and at least a few assisted in returning Tories. Somerset had returned to the Whig fold, and with Sir Robert Walpole was active from the beginning of the canvass.[1] As the dissolution drew near, the junto also bestirred themselves in raising election funds.

The Tories became active early in 1710. As they gradually gained the queen's ear, they used the crown patronage to further their interests.[2] In Scotland, England and Wales, Harley's agents were busy long before the dissolution, and their industry increased after it.[3] In its issue of September 28, the *Examiner*, the recently established Tory organ, printed extensive directions, urging the landed gentry, the Church, and those zealous for monarchy and hereditary right to support the Tories. Night and day, enthusiastic Tories thundered against the Whigs as republicans, who, because of their refusal to make peace, were oppressing the people with taxes.

The incessant cries of the Tories aroused the drowsy clergy as at Sacheverell's trial. At a time when bishoprics were considered a legitimate part of the patronage, the clergy took a great interest in elections. Such prominent ecclesiastics as the Archbishop of York and the Bishop of London had much to do in causing Anne to consent to a change of ministry.[4] Sacheverell's triumphant reception in the provincial towns and the loyal addresses that poured in on the queen, expressing the

[1] *Portland MSS.* (H. M. C.), II, pp. 216, 221, IV, pp. 575, 592; *Wharton MSS.* (Bodleian Library), IV, f. 38; *Wentworth Papers,* pp. 149-57; A. Boyer, *Political State,* I, p. 12. In a few cases, wily Tory politicians spread reports that certain Whigs would not stand for reelection. *Wentw. Papers,* p. 139. See also the *Observator,* IX, p. 10; *Coke MSS.* (H. M. C.), III, p. 90; *C. J.,* XVI, p. 420, XVII, pp. 15, 137; J. M. Robertson, *Bolingbroke and Walpole,* p. 48.

[2] *Portl. MSS.,* VII, p. 12; *Dartmouth MSS.* (H. M. C.), p. 297; *Wentw. Papers,* p. 117. See also *Portl. MSS.,* IV, pp. 575, 600.

[3] *Portl. MSS.,* IV, pp. 598-600; *Carte MSS.* (Bodl.), CCXLIV, f. 80; *Bath MSS.* (H. M. C.), III, p. 439; *Coke MSS.,* III, p. 86. See also *Portl. MSS.,* IV, pp. 546-92, VII, p. 17.

[4] *Carte MSS.,* CXXV, f. 99; *Mackintosh Papers,* Add. MSS., 34515, f. 99. See also R. Atkinson, *Thoresby the Topographer,* II, p. 38. On the Whig side Trelawny, Bishop of Winchester, was influential. T. Hearne, *Collections* (Doble and Rannie ed.), II, p. 437.

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greatest loyalty to Toryism, the Church and herself, contributed to the same end. "Incendiary sermons were preached from the pulpit," demanding immediate action against the enemies of Christianity and the Church. The lower clergy, stirred to fanaticism by their fear of persecution, were certainly the busiest, and probably the most efficient canvassers for the Tories, turning the election into a crusade against Low-Churchman and Dissenter, convincing "every peasant and small shopkeeper in the land . . . that a Whig in politics was a republican, and in religion an atheist, or, still worse, a Dissenter," and "urging their flocks to show on this great occasion their zeal for the Church," by assuring them that "now or never was the time."[1]

The women of the church were only slightly less active than the clergy, and were goaded into action by inflammatory sermons against the Whigs. Lady Coke, Lady Bellomont and Lady Marlborough were only the most conspicuous of their sex who interested themselves on the Whig or Tory side.[2]

Tories and Whigs alike were interested in the votes of the Dissenters, and most particularly of the Quakers. Through William Penn, Harley as usual exercised an appreciable influence over their voting.[3] In his inimitable way he also won over important dissenting leaders, while at the same moment he was being aided by the Highfliers,[4] who disliked both Low Churchmen and Dissenters because they had been instrumental in bringing over Germans from the devastated Palatinate. The Englishman's dislike of the alien is proverbial, and never was this feeling more prevalent than in the early eighteenth

[1] T. Wright, *Caricature Hist. of the Georges*, p. 8; F. W. Wyon, *Hist. of Reign of Queen Anne*, II, p. 218; J. Morley, *Walpole*, p. 18. See also W. Kennett, *Hist. of Eng.*, II, p. 540; *Coke MSS.*, III, p. 86; *Portl. MSS.*, IV, p. 607. Defoe criticized them for being too active—*Faults on Both Sides*, pp. 50-3. Tindal accused them of violating the rules of common gratitude by opposing their patrons and benefactors—*Hist. of Eng.*, IV, p. 192.

[2] *Coke MSS.*, III, pp. 90, 95; *Notes and Queries* (5th series), VII, p. 301.

[3] *Bath MSS.*, III, pp. 440, 442.

[4] Some Highfliers distrusted Harley and one of them styled him that "spawn of a Presbyterian". *Wentw. Papers*, p. 152.

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century.[1] More than a year prior to the election, Parliament passed the Naturalization Act, and during the summer 13,000 Palatines came to England, on whom the government spent more than £100,000. The constant collections for their support, their filthy habits, their continual begging, their foreign speech and their Low Church beliefs made them exceedingly objectionable to the English poor, who, filled "with indignation, . . . thought those charities, to which they had a better right, were thus intercepted by strangers,"[2] at the very moment when they were harried by press-gangs and borne down by the weight of their poverty.

Utilizing these prejudices to the utmost in their appeal to the country, the Tories made great headway against the Whigs; and the Anglican mobs, led by their clergy, were not averse to using violence in elections. Religious bigotry, indeed, largely accounts for the excessive amount of rioting which characterized the pollings. "The first regular political mob," said Thomas Wright, "was a High Church mob, stirred up for the purpose of raising a clamour against the Whigs and to influence the elections."[3] In places the cry against Whig candidates was so violent that they "dared not appear upon the hustings, and their friends were intimidated from voting in their favor."[4] Burnet assures us that the "violence went far beyond anything he had ever known in England."[5] "There

[1] See *Examiner*, no. 21, and also John Tutchin's *Foreigners*, with an answer to it in Defoe's *True Born Englishman* (1701).

[2] Tindal, IV, p. 152. The care of the Palatines engrossed a great amount of the government's attention. S. P. Dom., Anne, X, f. 88, XI, f. 44, XIV, f. 26, XVIII, f. 295; S. P. Dom., Entry Book, CVII, f. 229, CVIII, *passim;* P. C. Reg., LXXXII, f. 337, LXXXIII, f. 307; *Eg. Papers* (Br. Mus.), 894, f. 31; *Dayrolles Papers*, Add. MSS., 15886, f. 96; Defoe, *Review*, V, p. 600; T. Salmon, *Mod. Hist.*, XXVI, p. 65.

[3] *Caric. Hist.*, p. 3. *Cf.* Steele's *Marquis of Wharton*, p. 86; *Annals*, IX, p. 248; Kennett, II, p. 540.

[4] Cooke, *Bolingbroke*, I, p. 123. See also *An Impartial View*, p. 257; Mesnager, *Negotiations*, pp. 86-93; *Polit. St.*, I, p. 13.

[5] *Memoirs*, p. 188; "A vast concourse of rude multitudes brought together," in another place, "behaved themselves in so boisterous a manner that it was not safe to vote for a Whig."—*Hist. of My Own Time*, VI, p. 15. See also Chamberlen, p. 354; *Py. Hist.*, VI, p. 916. Lecky says the election was "one

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never was so prevalent a fury as the people of England shew against the Whigs and for the High Church," wrote Craggs to Marlborough.[1] Even Nonconformist clergymen suffered from their rancor. Reverend Matthew Henry noted in his diary that during the election at Chester he "durst not go to the funeral, nor preach the funeral sermon"[2] of a dear friend. "Nor do we fight with cudgels only as at Marlow, Whitechurch, etc.," wrote Defoe, "with swords and staves as at Coventry; with stones and brickbats, as at other places. . . . Even our civil war . . . was not carried on with such a spirit of fury as is now to be seen." Had it not been for the "moderation" of the Whigs "these new elections might have ended in, what was by many apprehended, a civil war."[3]

Similar disturbances occurred at Chippenham, Newark and Southwark,[4] but were probably most marked in London and Westminster. In the City the Tories formed a lane from the entrance of the hall to the hustings, through which each elector had to pass to cast his vote. As a result many doughty Whigs met insufferable insults while attempting to vote.[5] Even the Whig candidates were not safe, since Heathcote, at once a candidate, a director of the bank, and lord mayor, was insulted, and one man spit in his face. To the Tories, the poll was in a way a test of the political power of the moneyed interests, an earnest of the political strength of the Bank and East India Company; to the landed gentry, a challenge, and their activity increased accordingly. Every effort was put forth to terrify the Whig electors, so that many of them were afraid to poll.

of the most turbulent ever known in England."—*Hist. Eng.*, I, p. 59, and Morley speaks of "extraordinary violence" and "flagrant and brutal intimidations".—*Walpole*, p. 18.

[1] *Coxe Papers*, XXXIII, f. 102. See the *Examiner*, no. 12; Gibson, *Memoirs of the Reign of Queen Anne*, p. 90.

[2] J. B. Williams, *Life of Matthew Henry*, p. 263. At this polling, the Whig candidates were compelled to withdraw. Similar rioting ensued at Northwich (Norwich?).—*Ib.*, p. 264.

[3] *Annals*, IX, p. 249; Defoe, *Rev.*, VII, pp. 333-7; *C. J.*, XVI, p. 421.

[4] *C. J.*, XVI, pp. 409, 418, 420. *Cf.* Chadwick, *Defoe*, p. 362.

[5] Defoe, *Rev.*, VII, p. 356. See *Observator*, nos. 74-9; *Examiner*, no. 10.

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Nevertheless, the result was close, one Tory winning by only eighteen votes. The Whigs demanded a scrutiny, but the Tories carried the City for all their men.[1]

Conditions were even worse at Westminster, where the mob was aroused by the presence of alien Nonconformists. The Whigs appealed to English loyalty in nominating Sir James Stanhope who had been so successful in the war in Spain, and was supported by the dukes of Ormond and Buckingham; but the Tory mob termed him a sodomite, and their rage was so great that "those who polled for him were knocked down" and rudely treated by an "insulting mob", so that many were obliged "to return home without polling".[2]

The loss of London and Westminster was a severe blow to the prestige of the Whigs, and their candidates met harsh treatment elsewhere. Wharton's protégés were defeated throughout Buckinghamshire.[3] The heats were so great at St. Albans that Marlborough advised his duchess to take no part in the canvass, and for once she obeyed. Their candidate was beaten. At Woodstock the Marlboroughs were more active but not more successful.[4] In Bedfordshire the Whigs also met reverses; Speaker Onslow lost his election in Surrey, and the western counties and Wales were predominantly Tory.[5] "Contentions of late have been so much hotter than ever," wrote Swift, and the "elections are now managing with greater

[1] *Carte MSS.*, CCXLIV, f. 127; *Portl. MSS.*, IV, p. 617; *Py. Hist.*, VI, p. 916; *Annals*, IX, p. 251; *Observator*, no. 79; *Examiner*, no. 25. The nomination of Sir Richard Hoare seemed like an attempt to divide the strength of the Whigs. Luttrell, VI, p. 633. Even earlier the Highfliers sought in vain to elect a Tory lord mayor.—*Carte MSS.*, CCXLIV, f. 123; *Portl. MSS.*, II, p. 222.

[2] *Coxe Papers*, XXXIII, f. 123; *Add. MSS.*, 33273, f. 84. Swift described his exciting experience with this mob.—*Journal to Stella*, October 5, 1710.

Wharton MSS., IV, f. 38; Wyon, II, pp. 251-9. Wharton was not very active.

[4] *Add. MSS.*, 19606, f. 31; *Priv. Cor.*, I, p. 365. *Observator* (IX, p. 80) spoke of the riots at Taunton. See account of the violence and corruption at Weymouth and Melcombe Regis.—*C. J.*, XVI, pp. 410, 618.

Carew Papers, Add. MSS. (B. M.), 29599, ff. 119-21; Add. MSS., 28893, f. 394; Atkinson, II, p. 36.

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violence and expense, and more competition than ever was known".[1]

Whereas rioting and intimidation played a conspicuous part in many elections, we read also of much bribery, treating and "other illegal practices". Among the controverted election petitions no less than forty, involving the right to fifty seats, charge "bribery and other indirect practices."[2] At Bedwin the electors expected a subvention of from two to four pounds per man, and the by-election of 1711 in this borough indicated widespread petty corruption.[3] Carlisle offered similar examples in which the bribes ran as high as two guineas. One petitioner claimed that forty-one voters were admitted after the teste of the writ, eighteen received alms, and eighty-one were either bribed or treated.[4] Lord Abingdon learned that an opponent planned to spend £3,000 to carry an election against him, and one Highflier reported that some of the old ministry offered in vain £1,000 expense money to one man if he would stand as a Whig.[5] Concrete examples of petty bribery were also found at Chippenham, Guilford, Steyning, Tavistock and Winchelsea. The bribes were higher at Brackley, Wilton, Weymouth and Melcombe Regis.[6] Horace Walpole appealed to thrifty Lady Marlborough to be more liberal in her election expenditures.[7] A Steyning petition suggestively requested that forty-two voters be disqualified; thirty for bribery, ten for treating and two for receiving charity.[8] Treating, indeed, was

[1] *Examiner*, no. 12; Ball, I, p. 195.

[2] *C. J.*, XVI–XVII. Undue emphasis must not be placed on this, as it seems to have been a legal phrase to get the case formally before the Commons.

[3] *Ailesbury MSS.* (H. M. C.), pp. 200-4. Other instances are given in S. P. Dom., Anne, XIII, p. 102; *Verulam MSS.* (H. M. C.), p. 114.

[4] *C. J.*, XVII, p. 5.

[5] *Portl. MSS.*, VII, pp. 17, 21. Newcastle offered another candidate £1,000 for election expenses with the same result.—*Ib.*, IV, p. 570.

[6] *C. J.*, XVI, pp. 469, 477, 556-9; XVII, pp. 4, 213.

[7] Coxe, *Walpole*, I, p. 277. Similar efforts availed the Whigs nothing at Haslemere.—*Portl. MSS.*, IV, pp. 610, 614.

[8] *C. J.*, XVI, p. 505. At Oakhampton the mayor was accused of creating one hundred and thirty-five burgesses "generally strangers, many of them vagrants, deserters from the queen's service, and others all idle persons". At Ashburton twenty-two voted for one freehold of forty-two shillings rental.—*Ib.*, XVI, pp. 419, 557.

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the customary form of entertaining electors, although few patrons were so generous as Lord Ferrers, who plied the voters at Chartley with several hogsheads of ale, and six hogsheads of wine![1] One elector who drank to the candidate's health to the impairment of his own, testified that he had imbibed of a "new liquor . . . called Whistle-Jacket . . . made up of brandy and treacle"; and another witness, franker still, accused the mayor of making him "so drunk with brandy that he did not know what he did; but he was sure he voted for the petitioner."[2]

Bad as conditions were, bribing and treating were actually kept down by a recent law and the energetic campaign of the Highfliers against moneyed men and jobbery in elections. Dr. Atterbury in 1714 published a scathing denunciation of their methods in his *English Advice to Freeholders,* saying that "bank bills, places, lyes, threats, promises, entertainments are everywhere employed to corrupt men's affections, and mislead their judgments. Boroughs are rated on the Royal Exchange like stock and tallies; the price of a vote is as well known as an acre of land, and it is no secret who are the monied men and consequently the best customers." Another, this time a Scot, complained that "some gentlemen . . . spend many thousand pounds sterling to get themselves elected; and that too in the sight and knowledge of the whole world."[3] As the elections progressed, the precarious state of credit caused Harley much concern, as he doubtless attributed the fall of stocks to the insidious efforts of the moneyed Whigs. On the other hand, St. John was bitterly attacking the Whigs for the extensive use of money in the constituencies. Tory prejudice against stock brokers, jobbers and speculators rose to unprecedented heights for that time, and was measurably increased by the fact that as soon as news of a Tory victory in the canvass was spread broadcast, stocks fell nearly one-third. Furthermore the Bank re-

[1] *Coke MSS.,* III, pp. 88, 171.

[2] *C. J.,* XVII, pp. 107, 143. Charges of treating were also made at Hythe, Northumberland, Northampton, Stafford, Warwick and Winchelsea.—*Ib.,* XVI, pp. 408-17.

[3] *Memoirs of John Ker of Kersland,* II, p. 177.

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fused for a time to "discount foreign bills".[1] The complaints against the moneyed men of London were very pronounced and frequent during the progress of the election. Such criticisms were leveled at grievances that really existed; as at Boston where one candidate was totally unknown a week before the election; or as at Coventry, where "above 60 persons at a time have often come from London, and been permitted to vote without objection."[2]

The court in general opposed the Whigs, making it clear that Anne was displeased with her old ministry, and wished to be relieved of her thraldom and dependence upon a Whig House of Commons. Harley and the queen, therefore, sought to neutralize the influence of the moneyed interests by the law recently passed, which sought to prevent any extensive use of the patronage.[3] In one place, an adherent of Harley reported that he had secured fifty of the hundred and twenty-five electors "to vote for any person Harley named."[4] Mrs. Masham's husband was brought in by the court, and in one or two other instances Anne was probably active.[5] Rochester believed that the court, by using the clergy and the patronage, could win the election for the Tories.[6] One pamphleteer prophesied that "considering the influence of the court, and the interest of men in power, . . . it is very probable that the High Church men will have the majority."[7] White Kennett was of the same mind,

[1] *Wentw. Papers,* p. 167; *Bath MSS.,* I, p. 200; Parke, I, p. 16; *Portl. MSS.,* IV, p. 617; J. E. T. Rogers, *Industrial and Commercial History of England,* p. 126. *Faults on Both Sides* (p. 16), and Swift in the *Examiner* (no. 10) are violent against stockjobbers. *Cf. Portl. MSS.,* II, p. 223.

[2] *C. J.,* XVII, pp. 143, 156. See also *Portl. MSS.,* II, p. 253.

[3] 9 Anne, c. 5. The tendency of the time is well set forth by the boasts of a Whig early in 1710 that when the election came "the flood-gates of the treasury should be set open to pour out money for making interest in behalf" of the Whigs. Hearne, II, p. 349. See also Mesnager, *Negotiations.*

[4] *Portl. MSS.,* IV, p. 598. See also *ib.,* VII, p. 12.

[5] *Polit. State,* I, p. 247; *Wentw. Papers,* p. 152.

[6] Mesnager, p. 84.

[7] *Annals,* IX, App. vi, p. 63. See also *ib.,* IX, p. 248. So well-informed a man as Swift believed, nevertheless, that the new Parliament "had been chosen without endeavours from the court". — *Change of Queen's Last Ministry. Cf. Annals,* IX, p. 245.

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saying that "the High Church party generally prevailed through the influence of both the court and inferior clergy."[1]

The Scottish elections afford a good opportunity of studying the influence of the Crown,[2] and here Harley's management is most clearly evident. Working through such men as Viscount Dupplin, his son-in-law, Ilay, Hamilton and the Earl of Mar, he was able to gain a majority of the Scottish representatives in both houses.[3] This was possible in spite of the activity of the Whig officials appointed by the old ministry, who were still in office, because the Jacobites hoped by this election to bring back the "King over the water."[4]

While the court was so busy, the nobility was just as industrious. Somerset's success was by no means commensurate with his efforts; the Duke of Richmond was active at Steyning, and Beaufort, Ormand, Rutland, Devonshire, Newcastle, Shrewsbury and Chesterfield were also conspicuously active in the borough elections,[5] a resolution of Parliament notwithstanding.

Whereas it is clear that other means of influencing voters were not neglected, probably never before had the press been so assiduously employed by both parties. Pamphleteering became almost a fine art in this canvass, for none of his contemporaries so thoroughly appreciated the power of the press as did Harley. St. John, Swift, Atterbury, Prior and Defoe plied their able pens for the Tories, while Thomas Burnet, Congreve, Addison and Steele did valiant service for the Whigs. Many able tracts appeared on each side, the ablest probably being the series of which *Faults on Both Sides* stands as the most conspicuous, if not the most informing. Literally hundreds of

[1] *Hist. of Eng.*, II, p. 540. See also *Dayrolles Papers*, Add. MSS., 15886, f. 212.

[2] Corruption as such seems to have been limited. See, however, *Lockhart Papers*, I, pp. 319, 578.

[3] *Portl. MSS.*, IV, pp. 558, 564, 601, 622-5; *Dartm. MSS.*, p. 301; *Mar and Kellie MSS.* (H. M. C.), p. 485; Parke, I, p. 23; T. Keith, *Municipal Elections in Scotch Royal Boroughs*, pp. 266-7.

[4] *Lockhart Papers*, I, p. 319; *Marchmont Papers*, III, p. 370.

[5] *Ailesb. MSS.* (H. M. C.), p. 200; *Coke MSS.*, III, pp. 88-94; *Wentw. Papers*, pp. 149-57; *C. J.*, XVII, pp. 117, 213; Parke, I, p. 4; *Rutland MSS.* (H. M. C.), II, p. 192; *Portl. MSS.*, II, pp. 231-2, 233.

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political pamphlets, many of them of considerable length, appeared during the year. Some are of real historical value and deal more or less directly with the election.[1] Caricatures were, for the first time, frequently employed in this political contest. Sacheverell was depicted as in league with the pope and the devil, to which the Tories retorted by portraying Dr. Hoadly closeted with the devil, and emphasizing his bodily infirmities. Songs were extensively employed by each party to influence the elections, and although the theme was usually religious, they must have proved of service as catchwords for political partisans.[2] Periodicals took on new life; the *Examiner* was established, and through the genius of St. John and Swift proved a real force in the election. The *Medley*, the *Observator*, and the *Whig Examiner* were of great value to their respective parties, while the *London Gazette* and the *Postman* took care of the official and semi-official news.

For a season it seemed that the contest would result in the Commons being equally divided,[3] but soon the Tories began to forge ahead until their candidates were swept into office upon a tidal wave of High Church fanaticism. Trevelyan speaks of this election as a revolution, and it was with little doubt the most important election of the century until Pitt's victory in 1784.[4] The number of changes in seats would tend to bear this out. One secondary writer said there were 248 changes which brought new men into Parliament for the first time; another insisted that 270 men lost their seats; a third reported that some "said the Whigs would have only a third, others only a sixth of the new House"; and a fourth writer went even further, maintaining "that not more than 100 Whigs were returned."[5]

[1] See *Annals*, IX, pp. 248, 251; *C. J.*, XVI, pp. 420-2.

[2] Wright (p. 5) printed some Whig and Tory verses, and a few are found in *Carte MSS.*, CCXXX, f. 247. See also a *Collection of Poems, for and against Dr. Sacheverell;* Hearne, II, p. 356; *Marlb. MSS.* (H. M. C.), p. 19; *Examiner*, no. 10, Wright, pp. 7-10.

[3] *Polit. St.*, I, p. 12; Tindal, IV, p. 193. *Cf.* Mesnager, p. 91; *Priv. Cor.*, I, p. 398.

[4] Morley, *Walpole*, p. 19. See also Ball, I, p. 208; *Annals*, IX, p. 250.

[5] H. Elliot, *Godolphin*, p. 422; Leadam, p. 175; T. Macknight, *Bolingbroke*,

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Many contemporaries also insisted upon the size of the Tory majority. Calamy spoke of the Whigs as "surprisingly outnumbered"; Lockhart claimed only a "great majority" for the Tories. Carte noted there were "two-thirds at least for the Church besides what will be made by petitions, and also those placemen who will come over," and both Craggs and Walpole expected a two-thirds majority for the Tories. Boyer wrote that there would be 240 "new members, most, if not all, of their side."[1] Such statements are likely to be misleading. For England, Scotland and Wales, the names given by Carte show that 308 of those in the Parliament of 1708 were returned in 1710. Using Whitworth's list for England and Wales, 247 were returned for the same seats as in 1708.[2] The roster in the *Return of Members of Parliament* indicates that 318 sat in both Parliaments, although not necessarily for the same seats. An industrious contemporary left a list of those sitting in this Parliament, classifying them as follows: Tories, 304; Whigs, 145; Doubtful, 38; Not Elected, 26.[3] From this summary of the information, and in the light of what followed, it is difficult to conclude that the Whigs were so overwhelmingly defeated.

It may be profitable to recall the state of representation in 1710. Then, as in 1830, many boroughs were absolutely under the control of a patron, usually some peer or influential commoner, who treated them as property. His candidates would

p. 159; J. A. Manning, *Speakers of House of Commons,* p. 407. See also Ewald, *Walpole,* p. 51; J. Forster, *Defoe,* p. 80; L. von Ranke, *Eng. Hist.,* V, p. 338.

[1] *Life of Calamy,* II, p. 231; *Lockhart Papers,* I, 319; *Carte MSS.,* CCXLIV, p. 127; *Polit. St.,* I, p. 28. Swift and Chamberlen agree. One biographer said that it was "such a total change of ministry as is scarce to be found in our history."—*Life of Sarah, Duchess of Marlborough* (1745), p. 52. Peter Wentworth said that opposition would "look as vain as to attempt to stop the stream at London Bridge with one's thumb."—*Wentw. Papers,* p. 150. See also *ib.,* p. 149; Coxe, *Marlb.,* III, p. 138; *Priv. Cor.,* I, p. 400.

[2] *Carte MSS.,* CXXIX, ff. 427-41; *Succession of Parliaments* (*1660-1742*), *passim.*

[3] *Hanover Papers,* Stowe MSS. (Br. Mus.), 222, ff. 453-6. The lists in the *History and Proceedings of House of Commons* (*1660-1742*) and Cobbett's *Parliamentary History* give 254 and 257 respectively as the number of new members.

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on every important occasion represent the interest he desired, unless he agreed to surrender that right for valuable compensation. Consequently, nothing short of a revolution or a change of patron could alter the political complexion of a goodly number of "pocket" boroughs. These constituencies, then, acted as steadying agencies, to prevent any political landslide—a tendency much augmented by the habit of certain conservative constituencies to vote in the same way at each recurring election and return the same member to Parliament. In 1710 several men were not standing for the same constituencies as in 1708, either to favor the chances of some friend or to increase their own for reelection, by seeking the support of a new electorate. As a result, the choice of a different man by a borough would not necessarily mean either that his predecessor was not in Parliament, or that he was replaced by a Tory.[1]

The pollings during the autumn were not the only agencies responsible for the composition of Parliament, as many controverted elections were brought before the House of Commons. Two methods were employed in deciding these. Usually they were referred to the Committee on Privileges and Elections, which reported back to the house. Whenever the house wished it, however, the case was heard at the bar. The number of disputed election cases was unusually large, involving the right to one hundred seats. Of these, eleven were heard at the bar, and the rest referred to the committee. Thirty-two cases were never reported upon, eight declared void, eleven withdrawn,

[1] An examination of twelve important divisions in the Commons before, and twelve after, the election shows the Tories considerably stronger after the election than the Whigs were before.

Average strength	*Whigs*	*Tories*
Before the election of 1710	176	147
After	99	176
Largest vote		
Before	232	
After	...	234
Smallest vote		
Before	...	119
After	114	
Greatest majority		
Before	230	85
After	106	232

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thirteen decided in favor of the sitting members, and thirty-one went for the petitioners.[1] It was notorious, even in those days of political corruption, that election petitions afforded the majority party in the Commons an opportunity of swelling its numbers, of which it was quick to take advantage by excluding its opponents from Parliament, no matter what the constituents might have said at the polls.[2] These petitions were not all heard at the beginning of the session, but some dragged on into the second, and sometimes into the third session of Parliament, so that their political influence was not immediately discernible.

Long before the final results of controverted elections were known, the influence of the numerous by-elections became noticeable. The importance of this factor in changing political majorities has been little understood, as few historians have appreciated how many seats were vacated as a result of death, appointment to office under the Crown, elevations to the peerage, or election by two constituencies, even in a Parliament which lasted only three years. When the Commons might continue seven years, the percentage of by-elections must have risen to a large fraction of its total membership. During the Parliament which now began its sessions, 126 by-elections were held, 51 because of the statute requiring any member accepting office under the Crown to resign and stand for reelection if he wished to continue in Parliament; 34 more were due to death; 16 to elevations to the peerage; 14 because a member had been returned for two constituencies; 11 on account of the election being declared void, or the member-elect expelled. Of the 62 seats vacated by royal officials or void elections, 45 of the men were reelected. Of the 51 who accepted office under the queen, only 10 were not returned.[3] This result, taken in conjunction with those in 1708 and 1713, points to the important part played by the patronage in keeping the commoners in line.

[1] The information upon which these figures are based is found in *C. J.*, XVI-XVII. Twenty-eight petitions were heard, December 1, 1710. See also Luttrell, VI, p. 667.

[2] Tindal, IV, p. 193; *Polit. St.*, I, p. 163; *Monthly Mercury* (1710), pp. 428-34.

[3] *C. J.*, XVI–XVII; *Return of Members of Parliament*, II.

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From all these studies it would seem that the extent of the Whig overthrow has been overestimated. Yet, the election was clearly a Tory victory, as it is highly probable that the majority was cut down steadily by the by-elections after 1711.

What did the Tory triumph mean to the English public? It meant first of all, of course, that the ministerial revolution, carried out by Harley and the queen, received the support of the electorate. To the High Church zealots the result of the poll seemed a mandate to return to the religious intolerance of the Clarendon Code and Test Act. To the Tory leaders it suggested the desirability of making peace with France in spite of the dilatory tactics of her allies. To the landed aristocracy it meant peace and the end of the objectionable land tax, and a decrease in the power of the moneyed classes who profited most by the war. To the lower orders it signified little except a temporary cessation of a rigorous policy of impressment. To the Jacobites it brought confident anticipation that the new ministry would pave the way for the accession of the Pretender after Anne's death. To the queen herself it meant the end of her subservience and the beginning of a friendly cooperation with her ministers. Each of these hopes was fulfilled in part, even that of the Jacobites, whose well laid plans were wrecked by the sudden death of the queen and the *coup d'état* engineered by the Whigs. Thus terminated the ascendancy of the Tories until William Pitt the Younger, acting as their Moses, ended their three score years and ten of wandering in the wilderness and began a half-century of Tory supremacy, which closed only with the Reform Bill of 1832.

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THE DEVELOPMENT OF THE ANTI-JAPANESE AGITATION IN THE UNITED STATES

1. *The Beginnings*

WHEN President Fillmore called the attention of the Congress of the United States to the rude treatment accorded shipwrecked mariners unhappily cast upon Japanese shores, he unknowingly opened up a problem which has already perplexed the western world for three-quarters of a century.[1] Before this time there had been no Oriental problem. It had been forestalled by the stern intolerance of Toyotomi Hideyoshi who, in the seventeenth century, banished all foreigners, whether priests or traders, from Japan, and commanded all Japanese, under penalty of death, to remain at home.

But the pressure of trade and of ideas perforce brought this isolation to an end. In 1853 the Black Ships of Commodore Perry steamed into Yedo Bay. Five years later Townsend Harris signed the first treaty between Japan and the United States. With these acts, Japan was placed in contact with the western world. Intercourse between nations in the past has usually been marred by discord. And in the case of Japan, the opportunity for misunderstanding has been increased by the factor of race.

Immigration was the first cause of friction between Japan and the United States. As early as 1851[2] a few shipwrecked Japanese were tossed upon the Pacific Coast. But the first actual immigrants were brought into this country by a Hollander

[1] Third annual message, December 6, 1852, *Messages and Papers of the President* (Bureau of National Literature edition), p. 2703. For the very early activities of Japanese abroad, see Chapman, *A History of California* (1921), chapter iv, "The Japanese Opportunity in the Pacific".

[2] Treat, *Japan and the United States* (1921), p. 253. For the opening of Japan to the western world, see the same writer, *The Early Diplomatic Relations between the United States and Japan 1853-1865* (1917); also Satow, *A Diplomat in Japan* (1921).

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who, driven from the employ of the Japanese Court, sought refuge in America.[1] In 1880 there were only about one hundred and fifty Japanese in the entire country. But their number rapidly increased after the legalization of emigration by the Japanese government in 1885.[2] As early as 1889 some Japanese were employed as section hands at Portland. About the same time others gradually sifted into Vancouver and spread out along the Pacific Coast, entering the mines, the fisheries and the farms. Beginning with 1891, over a thousand Japanese entered America yearly, subject only to the restriction of the general immigration laws. In 1898, the number of immigrants was 2,000; two years later, it jumped to 12,000.

There were three reasons for Japanese emigration to America. The first was economic. Wages averaged about fourteen cents a day in Japan,[3] where the pressure of population had already made the food problem acute. Little wonder that stories of two-dollar-a-day wages in America led the Japanese to forsake the home of their ancestors! In fact, the greatest number of emigrants came from those provinces where agricultural conditions were the worst and where poverty was most widespread.

Secondly, Japanese emigration was caused by the labor shortage in California, which had arisen partly because of the fact that Chinese labor had been excluded by the Acts of 1882 and 1892. Negroes, Mexicans, Filipinos, Hindus, Porto-Ricans and Japanese were now eagerly sought after by California farmers.[4] According to one eye-witness, "568,943 acres of farm land were put out of cultivation. From Bakersfield to Redding, banks had mortgages on farm lands that could not be made productive because Chinese labor had been driven out".[5]

[1] Carey, *A History of Japanese Immigration,* unpublished manuscript taken from Japanese sources, furnished me by Dr. G. W. Hinman.

[2] Ichihashi, *Japanese Immigration, Its Status in California* (1916), p. 7.

[3] Yoshida, "Sources and Causes of Japanese Emigration," *Annals of the American Academy of Political and Social Science,* vol. 34, no. 2, p. 162.

[4] Coolidge, *Chinese Immigration* (1909), pp. 384-385.

[5] Testimony of J. P. Irish, Hearings before Committee on Immigration and Naturalization, H. of R., *Japanese Immigration* (Government Printing Office, 1921), pp. 43-44. Hereafter cited as *Hearings.*

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It was not until the year 1885 that the Japanese government authorized the emigration of Japanese. In that year it was permitted, but with express stipulation that the emigrants should never lose their allegiance to the Mikado. Each Japanese subject was required to register in his native prefecture, which he could leave only with the permission of the authorities. If he wished to go out of the country it was necessary to procure a passport which provided that he must return within three years.[1]

Based as it was upon a paternal feudalism, the Japanese government attempted to make certain that its emigrants abroad should creditably represent their fatherland, and that in case of destitution they should return home. With this purpose in view, the "Emigrants' Protection" Law was enacted by the Japanese parliament in 1896. It provided that every laborer leaving the country should have some responsible surety at home who could be compelled to provide for his care during sickness and, if necessary, for his return.[2]

Despite the excellent intentions of this law, it actually stimulated the emigration of Japanese to the United States. The requirements were so stringent that few laborers could individually meet them. Consequently, a number of emigration companies sprang up which provided every laborer with a surety, furnished him with transportation, and gave him a job at his destination. Working in connection with labor contractors in the United States, these companies built up a business of great profit. In order to regulate their activities, the government required a guarantee. It was necessary also that their foreign agents be approved. These emigration societies soon began to wield a tremendous power in Japan. The aggregate capital of twelve of them was 558,999 yen, and stock was held by the leading business men and politicians of the country.[3]

[1] Rice, *Immigration of Japanese,* House Doc. No. 686, 56th Congress, 1st sess., May 14, 1900, p. 4.

[2] *Third Report of the Commissioner of Labor on Hawaii,* Bulletin of Bureau of Labor, no. 66, September, 1906, p. 505.

[3] Rice, *op. cit.,* p. 5.

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Six of these companies maintained agents in the United States and Canada.

As a result, emigration to the United States and Hawaii increased tremendously. In the five years between 1899 and 1903 the number of emigrants going to foreign countries, excluding Korea and China, was 84,576. Eighty per cent went to the United States.[1] In the year 1900, four times as many Japanese entered America as in the previous year. Naturally this irritated the sensibilities of California—easily aroused after a riotous twenty-year struggle with Chinese immigrants.

California's attention was first attracted to Oriental labor in 1888 when a San Francisco shipowners' association manned several of its vessels with Japanese. In 1891 a Mr. Doyle, a former resident of Japan, came to San Francisco and proposed to bring in 5000 Japanese from the Hawaiian islands—a suggestion which was immediately protested by the city Trades' Council.[2] The first real protests against the Japanese were not made, however, until 1900. In March of that year symptoms of bubonic plague appeared in San Francisco. Immediately Mayor Phelan and the Board of Supervisors quarantined the Chinese and the Japanese quarters, but no other part of the city.[3] This discrimination led the Japanese to form the "Japanese Association of America" for the purpose of protecting their interests. Feeling was further heightened by a belief that stories of the plague were based on unfounded evidence, and that they were being circulated purely for political purposes.[4] Partly because of the excitement stirred up over the plague and partly because of the increased number of Japanese immigrants, a mass meeting was held in Metropolitan Hall, on May 7, under the auspices of the San Francisco Labor Council. After listening to addresses by Professor Ross, then of Stanford University, and Mayor Phelan (who later became

[1] Yoshida, *op. cit.*, pp. 160, 161.

[2] *San Francisco Chronicle*, March 20, 1905; special article by Walter Macarthur.

[3] *Ibid.*, March 7, 1900.

[4] *Ibid.*, May 30, 1900; editorial, "Phelan in the Rôle of a Fakir".

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United States Senator), the meeting passed a resolution urging the extension of the Chinese Exclusion laws to include the Japanese.[1] In the same year, the State Labor Commissioner also referred to the sudden increase in Japanese laborers;[2] while Governor Henry T. Gage called the attention of the legislature to the "Japanese problem" in his message of January 8, 1901.[3]

As a result of this agitation, the Japanese government showed the conciliatory disposition which it has usually held toward American opinion, by amending the Emigration Act of 1896. In July, 1900, the Foreign Department announced that henceforth no passports whatever would be issued to Japanese coolies wishing to go to the United States.[4] As a result, the number of Japanese arrivals declined one-half in 1901.[5] This voluntary limitation was the first "Gentlemen's Agreement." However, it did not satisfy many elements in the State. In November, 1901, a Chinese Exclusion Convention was called in San Francisco by the Board of Supervisors. Its official purpose was to urge upon Congress the necessity of re-enacting the Chinese exclusion laws which were soon to expire. But it also adopted a resolution which recognized "in the character and rapidly increasing numbers of Japanese and other Asiatic immigrants a menace to the industrial interests of our people." Likewise, the American Federation of Labor, in its convention in San Francisco, November, 1904, demanded that the exclusion laws be applied to Japanese immigrants. However, there was no vigorous movement against the Japanese on the Pacific Coast until 1905. In order to understand this agitation, which for intensity recalled the days of Dennis Kearney and his stormy Sand-lotters, and very nearly involved the country in war, it is necessary to take some account of the political situation in California at this time. Partly because of the Chinese

[1] *Ibid.*, May 8, 1900.

[2] *Ninth Biennial Report of the Bureau of Labor Statistics*, 1899-1900, p. 15.

[3] *San Francisco Chronicle*, January 9, 1901.

[4] Statement of K. Uyeno, Japanese Consul-General, *San Francisco Chronicle*, April 5, 1905.

[5] From 12,626 in 1900 to 4,909 in 1901.

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agitation, extending between 1855 and 1882, the Workingmen's Party had won control of the State, and in 1879 was strong enough to frame a constitution which is still in force. But the position of Union Labor was soon to be contested. In 1888 San Francisco capitalists organized themselves into a number of different associations, resolved to drive the workingman from power.[1] A period of financial depression so strengthened them that they were able to lower wages and to establish the "open shop" in politics and in industry as well. The Workingmen's Party by this time had disappeared.

However, between 1898 and 1901, San Francisco underwent a period of unrivaled prosperity. The annexation of Hawaii, the opening of the Alaskan gold mines, and the outbreak of the Spanish-American War increased the business of San Francisco and revived the drooping industries of the whole state. An unfilled demand for workingmen now strengthened the labor forces. Determined on revenge, the labor leaders organized the State Federation of Labor in January, 1901. Its fight against the Employers' Association culminated in the San Francisco teamsters' strike of July—a strike caused by the refusal of the organized teamsters to deliver goods to a non-union express company.[2] The issue was clearly Unionism *versus* non-Unionism. The Employers' Association refused to negotiate with the men, and the men refused to have anything to do with the employers.

There was nothing peaceful about the strike which ensued. One shipping company employed prize fighters to act as strike-breakers. Union men attacked non-union teamsters carrying goods away from railroad yards.[3] In order to protect these men, the chief of police placed two policemen on each truck. Labor leaders demanded that the policemen be removed. The mayor replied that it was his duty to secure public order. At a meeting held September 23, 1901, he was said to have de-

[1] Eaves, *A History of California Labor Legislation* (1910), p. 50 *et seq.*

[2] Hichborn, *"The System", as Uncovered by the S. F. Graft Prosecution* (1915), p. 11 n.

[3] *San Francisco Chronicle,* September 22, 1901.

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clared that if the workmen did not want to be clubbed, they should go back to their jobs. This story, which was later proved to be false, turned the labor forces against the Phelan administration and resulted in the organization of the Union Labor Party.

This new party was successful enough to win the election of November, 1901, and place Eugene E. Schmitz in the mayor's chair. Schmitz was a man of little education, with no experience in politics. He had been hired as a musician in a San Francisco theater, and was a member of the Musicians' Union. Under the leadership of this man, San Francisco was governed for five years which were to be truly momentous in California's history. During this period, San Francisco was to be visited by a devastating earthquake and fire, interpreted by many to be a divine judgment on a wicked city. Corporations were beginning their exploitation of the boundless resources of a magnificent state. Telephone companies struggled for franchises; the water supply was vested in a private monopoly; the United Railroads strangled San Francisco's transportation facilities; the Southern Pacific Company actually retained legislators and subsidized newspapers to make certain the political control of the State.[1]

Naturally the victory of the Union Labor Party, headed by an ignorant and self-seeking man, was eagerly seized by these interests, and an attempt was made to transform California into a *latifundium* which would have done credit to the patricians of Rome. Schmitz, in fact, owed his position, not to the long-suffering workingmen of San Francisco, but to the genius of the most able and most crooked political boss San Francisco has ever seen. This was Abraham Ruef—a Jew, a lawyer, a college graduate, a Republican. Schmitz made an admirable tool with which Ruef could work. The latter contributed $16,000 to Schmitz's first campaign fund.

Under the leadership of Schmitz and Ruef, San Francisco went through a period of political corruption which would make the blackest deeds of Boss Tweed look as harmless as

[1] Fremont Older, *My Own Story* (1919), p. 23 *et seq.*

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politics in a woman's club. Franchises were bought and sold; the United Railroads bribed the supervisors with the fat sum of $200,000; the city tax-collector ran off with an adventuress and several hundred thousand dollars of the tax-payers' money; houses of ill-fame maintained a fixed schedule of prices by which police officials, from captains to patrolmen, were systematically bribed; gamblers shared their ill-gotten gains with the mayor; "French Restaurants"—infamous houses of assignation—paid Abe Ruef large sums to secure liquor licenses, and half of this tribute was turned over to Schmitz. Boodling was rampant everywhere.

So firmly did the Machine have control of the processes of justice in California, and so cleverly did it conceal the magnitude of its crimes, that the greatest skill of detective William J. Burns and attorney Francis J. Heney was necessary finally to dig out the poisonous roots of San Francisco's life.

When Ruef and Schmitz were finally brought to trial in 1906, the working of the "system" became more vigorous and more desperate than ever. Ruef attempted to flee. When this failed, an effort was made to secure the passage of a change of venue bill by the state legislature which would free the culprits on a technicality. Jurors were bribed; Fremont Older, the dauntless editor of the *San Francisco Call*, who led the campaign against the boodlers, was kidnapped; a gunman was hired to murder him, and only the ruffian's loss of nerve saved Older's life. Francis J. Heney was shot while in court by an ex-convict who was a juryman on a former Ruef trial, and whom Heney had exposed.[1]

This disgraceful situation in San Francisco was intimately related to the Japanese agitation. First, the Labor party was in power, and Japanese immigration affected workingmen vitally. Secondly, the Schmitz administration would naturally seize upon every means and occasion to divert public attention from its own crimes.

[1] Ruef was finally convicted for bribery, and was recently pardoned. Schmitz was freed on a technicality and ran again for mayor in 1919.

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But in addition to the political situation, there were four other causes which led to the outbreak against the Japanese in 1905 and 1906. In the first place, the Gentlemen's Agreement of 1900 had not been enforced. Japanese laborers kept dribbling in from Japan, despite the limitation which the Japanese government had imposed. The chief reason was that the administration of the Japanese passport law was placed in the hands of local officials, from whom it was not difficult for the powerfully financed emigration companies to purchase passports.

Furthermore, the restriction had not applied to the laborers wishing to go to Hawaii. Passports were still issued to this destination. Originally the Japanese had been invited by the Hawaiian Government to work on the sugar plantations.[1] In 1886 Hawaii and Japan entered into an agreement providing for the importation of Japanese laborers. When Hawaii was annexed to the United States in 1898, this official encouragement came to an end. But the planters of the island still wished cheap labor.[2] Moreover, the emigration companies continued to bring Japanese in, not only to supply the labor market in Hawaii but also to transport them later to the Pacific Coast. The Japanese, on the other hand, were willing to leave Hawaii for the mainland because of the higher wages paid in California—and because of the irksome restraints imposed upon them by the sugar plantations.

This is a typical advertisement, printed in a Hawaiian Japanese paper:

Special Notice

In the next three months we shall recruit 1,000 laborers of Niigata Province, Japan, for the mainland. Apply at the hotel below. Don't

[1] *Third Report, Commissioner of Labor on Hawaii,* cited, p. 503.

[2] The charge has been made that the Planters' Association of Honolulu later contributed to the funds of the Asiatic Exclusion League, in order to keep Japanese laborers in Hawaii, and thereby keep wages down. King, *Report of the Royal Commission appointed to inquire into the methods by which oriental laborers have been induced to come to Canada.* Quoted in "Immigration Situation in Other Countries", *Senate Documents,* vol. 22, 61st Cong., 3rd sess., 1910-11.

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miss a good chance! The Industrial Corporation of Japanese of Niigata Province have sent a representative to Hawaii to encourage their countrymen to go to America. This representative, Mr. Seisku Kuroishi, assists applicants in every way. Yamaichi Hotel, February 1, 1905.[1]

It was apparently impossible to arrest the activities of these emigration companies under the authority of the Contract Labor Laws of the United States. There was nothing but an oral understanding between the companies and the Japanese. But for all purposes the latter were contract laborers: when a boatload of Japanese landed in San Francisco, they were lined up in companies, marched to Japanese boarding houses, and then assigned to contractors along the entire coast.

As a result of the activities of these companies, emigration from Hawaii to the mainland increased alarmingly. The figures follow:

January 1–September 30, 1902	1,054
October 1–September 30, 1903	2,119
October 1, 1903–June 30, 1904	3,665
July 1, 1904–December 31, 1905	13,803[2]

The next factor was the Russo-Japanese War, which began in February, 1904. American opinion was at first sympathetic toward Japan in a war which the latter was apparently fighting to check an imperial Pan-Slavism. The pluck of this new nation, with scanty resources and limited manpower, aroused the admiration of the English-speaking world. But with the progress of the war and the repeated victories of the armies of Nippon, the enthusiasm for the yellow man, at least along the Pacific Coast, began to wane. The Kaiser's extravagant warning of the "Yellow Peril" found instant response among the workingmen of California. Congressmen lent themselves unconsciously to this propaganda. Mr. Hull, chairman of the House Committee of Military Affairs, declared that if Japan won the war with Russia, she would fight a "bloody war with

[1] *Immigration Commission Reports* (42 vols., 1911), vol. 23, p. 15.

[2] *Third Report of Commissioner of Labor on Hawaii*, p. 378.

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the United States over the Philippines."[1] The *Ogden Standard* declared that the Japanese "feel quite confident of their ability to defeat the American navy and humiliate our army."[2] And Senator Selvage likewise declared: "Those who have followed the course of events in Asia for the past few months have not failed to discover therein a great, a serious menace, not only to California, but to the Nation." The excessive demands of Japan at the Portsmouth conference and her gradual absorption of Korea did nothing to allay California's fear.

Of more practical importance was the possibility that at the close of the war the desire of the Japanese to come to the United States would be greater than ever. Tired of the struggle into which they had been drafted, and fearful of the economic hardships which the war imposed on those who remained in Japan, they would seize every opportunity to migrate to El Dorado across the seas. It was the fear of this "invasion" which fortified California's outcry for ironclad exclusion.

Finally, the workingmen of California had already felt the pinch of Japanese competition. They could therefore easily imagine the effect of an increased Asiatic population upon their well-being. The Japanese were accused of maintaining sweat-shops; of driving white female domestics out of employment; of forcing two hundred shoe-repairing men out of San Francisco; of invading the fruit districts of Vacaville, Fresno and Visalia; of controlling all unskilled labor on the railroads and in the beet-fields; of cutting into the white laundry business; and of underbidding white building contractors from twenty to sixty per cent.

To these economic grievances were added political and racial denunciations. The Japanese were accused of perpetual allegiance to the Mikado. Rumors that Japanese at American army posts were gaining detailed knowledge of American fortifications, were persistently circulated. Finally, it was charged that the Japanese were actually crowding American children out of schools. The *Chronicle* declared against "the daily

[1] *San Francisco Chronicle,* March 16, 1905.

[2] Quoted, *ibid.,* March 23, 1906.

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contact of young girls with adult men of Asiatic birth and training."

It is impossible to tell the amount of truth there was in these charges. Suffice it to say that they, in company with the charges made later, were grossly exaggerated. Nevertheless, the ineffectiveness of the limitation imposed in 1900 and the activities of Japanese imperialism abroad, easily led to violent protests. It was just before the siege of Mukden that the *San Francisco Chronicle* chose an opportune time to launch the anti-Japanese campaign in California. On February 23, 1905, it printed a nine-column article, covering nearly two pages, on the dangers of Japanese immigration. "It contains as much of a menace as the Chinese immigration ever did", declared the *Chronicle*. The number of Japanese then in the United States was placed at 100,000—a greatly exaggerated figure. The first result of the article was to arouse the state legislature. On the first of March the senate unanimously adopted a resolution declaring against the unrestricted immigration of the Japanese, and asking the federal government for immediate protection.[1] The *Chronicle* graphically reported the adoption of this resolution in these words: "The resolution was not the product of the moment; it was not the result of an indignant mass meeting, but was deliberated upon and discussed, in a great measure, calmly and dispassionately by men of affairs—men who have 'made good'—many of whom, if they so desired, need take no interest in the welfare of the laborer, having amassed a competence sufficient to maintain themselves and their families in comfort. But many of the Senators were born here, and they are proud of the name their forbears made for the State of California, synonymous everywhere with things big, broad, and great, from the biggest things in nature to men and money. Their fathers wrested the State from a foreign power, riveted it to the Union with their bayonets, and today their sons acted on a proposition that a California should hold what a California has"![2]

[1] For the ten charges then made against the Japanese, see Senate Joint Resolution, No. 10, *California Statutes*, 1905, p. 1060. This resolution passed the lower house the next day.

[2] March 2, 1905.

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At the instigation of this newspaper, the leadership of the anti-Japanese movement now passed into the hands of union labor, which was at this time so firmly intrenched in San Francisco politics. On March 10, 1905, the Labor Council of San Francisco, then the largest labor body in the country west of Chicago, held a meeting in which the campaign against the Japanese was definitely launched under the leadership of Olaf Tveitmoe, a Swedish laborer who served a term in a Minnesota state prison for forgery and who later was to be convicted for complicity in the MacNamara dynamite plots.[1] Boycotts on the Japanese were now urged—even on white merchants or manufacturers employing Japanese. The campaign was on in earnest.

On Sunday, May 7, 1905, a mass meeting was held at Metropolitan Hall to launch the Japanese and Korean Exclusion League. The *Chronicle* was lurid in its description of this gathering. Publishing a picture of a group of swarthy, foreign-featured laborers, who composed the "convention," it said: "Some present owned their own little homes; while a majority know what it is to sit with the good wife of an evening, figure on approaching rent day and make up the cash on hand to see if there is enough to carry the family over to the next day." Men of "swelling muscles" attended this meeting—and grimly cheered fulminations against the yellow men who were keeping them from having "lace curtains on the windows"!

As a result of this agitation, the Japanese government for the second time showed its good-will, by first limiting the number of Japanese who might emigrate to Hawaii to 500 per ship, and finally by suspending temporarily all emigration to Hawaii (April, 1905). But even this did not satisfy the Exclusion League. On the contrary, it redoubled its activities by recruiting members, by pledging political candidates to an exclusion law, and by attempting to organize all of the western states in a concerted movement to force Congress to grant its desires. A platform was constructed of five planks which declared:

[1] *Los Angeles Times*, March 23, 1913. He was freed from the federal penitentiary on a technicality.

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(1) that the Chinese exclusion laws be extended so as to exclude all classes of Japanese and Koreans, except those exempted by the terms of the Chinese Act, from the United States and its insular territories; (2) that the members of the League should pledge themselves not to employ or patronize Japanese nor to patronize any person or firm employing Japanese or dealing in products coming from such firms; (3) that the action of the School Board in adopting a policy segregating Japanese from white children be approved; (4) that a propaganda campaign calling the attention of the President and Congress to this "menace", be undertaken; (5) that all labor and civic organizations in California be asked to contribute a fixed assessment to the cause.

It is a mistake to believe, however, that California was united in its opposition to the Japanese. On March 20, 1905, the Methodist ministers of San Francisco declared that "not one of these charges [against the Japanese] could be substantiated." David Starr Jordan of Stanford University said that an exclusion measure would mean "war between the United States and Japan." President Eliot of Harvard also spoke of the "insolence of excluding Japanese from this country because of their inferiority." Finally, the fruit-growers of San Joaquin and Santa Clara valleys formally protested against legislation excluding Japanese labor, on the ground that such legislation would make it impossible to harvest their crops.

Meanwhile, a lull came in the anti-Japanese storm. The peace negotiations between Japan and Russia, the effort made in the East to modify the stringent administration of the Chinese exclusion laws, the attempt on the part of the *Chronicle* and other forces to defeat Schmitz for reelection in 1905 —all consumed the attention of the anti-Japanese forces. But the defeat of John S. Partridge, the *Chronicle's* candidate for mayor, caused this journal once more to turn its broadsides against the Japanese. The Exclusion League was also doggedly pursuing its campaign. California congressmen had agreed to introduce exclusion bills in the next Congress, which was to meet in the fall of 1905. However, an unexpected obstacle to their carefully laid plans was found in the person of President

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Roosevelt. In his annual message of December 5, 1905[1], he urged a non-discriminatory immigration policy which would not single out a man on account of his color or his creed. But he dealt his most vigorous blow at the suggested exclusion of the Japanese in an informal manner. A committee of California congressmen and others had obtained an interview with the President in regard to the proposed exclusion bills. When hearing of the contemplated legislation Roosevelt is reported to have become furious. "What on earth did you Californians mean by introducing such a bill?" he roared. "Didn't you know such a thing is preposterous? With our great trade openings in the Orient, and our peculiar relations with those countries, and with our solemn treaty with Japan, which is the supreme law of the land? Do you suppose I would approve a bill that would be a violation of a treaty and an affront to Japan? Why, I would veto it if it were passed unanimously". The President then asked who these people were who were backing the bill. On being informed that they were headed by one Livernash, the President gritted his teeth, pounded his desk, and exploded, "Send them to me! Send them to me! I'll veto the bill and deport Livernash!" Speaker Joe Cannon expressed similar and nearly as violent sentiments when he declared to one of the bill's sponsors, "Loud, what in hell do you fellows in California mean by introducing a bill to exclude the Japanese from the United States? . . . You'd better leave well enough alone."

In this overbearing manner, the President poked holes in the exclusion dikes of which the League had so blissfully dreamed. The President was wrong in his premises: the exclusion of Japanese labor did not violate our treaty with Japan of 1894. The last paragraph of Article II of this treaty expressly declared that the provisions of the treaty should not "in any way affect the laws, ordinances and regulations with regard to trade, *the immigration of laborers*, police and public security which are in force or *which may hereafter be enacted* in either of the

[1] *Messages and Papers of the President*, p. 7388.

[2] *San Francisco Chronicle*, December 7, 1905.

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two countries"[1]. The President was also wrong in intimating that the treaty was the "supreme law of the land" in the face of contradictory laws enacted later by Congress. Even if the treaty of 1894 had guaranteed the admission of Japanese labor to America, Congress had the *legal* right to abrogate that treaty at any time by the mere passage of an exclusion law. This point President Hayes had admitted in regard to the Chinese Exclusion Laws; and the Supreme Court has upheld this position repeatedly.[2] Despite these mistakes, Mr. Roosevelt thoroughly frightened the California congressmen; exclusion was temporarily dead.

2. *The San Francisco School Incident*

Japanese laborers continued to enter the United States. Worse still, the federal government had refused to recognize the necessity of keeping them out. It was well aware that any restrictions placed on Japanese immigration would be deeply resented by Japan. President Roosevelt had refused almost insolently to consider California's case. It was not strange, therefore, that the politicians of San Francisco resolved to take matters into their own hands; to substitute local for national action; to become town-heroes by defying the national will. Consequently the Exclusion League continued its activities. It demanded that the anti-Japanese boycott be intensified. It even asked that every union man in the state contribute one cent a month toward the campaign. Plans were made for a "monster" mass meeting to be held on May 6, 1906. But this meeting was thwarted by a disaster which has seldom been equaled in the annals of an unreasoning Nature. On April 18, San Francisco was visited with an earthquake and fire which cut off the city completely from the outside world. It was bereft for days of all transportation facilities, of gas, of water, of light, of all means of communication, even of food. It is remarkable that only five hundred lives were lost in a disaster

[1] Malloy, *Treaties, Conventions, etc. of the United States*, p. 1030.

[2] See his veto message, *Messages and Papers of the President*, pp. 4470-4471. Also *The Head Money Cases*, 112 U. S. 580; *Cherokee Tobacco Case*, 11 Wall. 616; *Fong Yue Ting, v. U. S.*, 149 U. S. 698.

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which damaged property to the extent of $350,000,000 and which sent skyscrapers reeling to the ground. This great tragedy, of course, postponed anti-Japanese propaganda. The Japanese showed their good-will toward San Francisco by contributing, through the Red Cross, almost $250,000 to the sufferers.

But the reconstruction of the city again resurrected anti-Japanese sentiment. Ten thousand Japanese had been affected by the fire. In an effort to find new homes and business locations, many invaded the western districts of San Francisco which hitherto had been "white man's land."

Meanwhile other sources of irritation manifested themselves. Immigration by no means had ceased. For the first six months of 1906 the excess of Japanese arrivals over departures in San Francisco alone was 5772, a figure which led the *Chronicle* to declare, "If the next Congress does not act in this matter it will assume very grave responsibilities." At this time also occurred the Japanese sealing incident. Sailors on a Japanese ship landed on St. Paul's Island, and, contrary to law, killed a great number of female seals. This caused the *Chronicle* again to protest that "The lower classes of Japanese . . . are born thieves." Increasing evidence of Japanese imperialism in Manchuria and Korea did nothing to sooth the troubled waters. Furthermore, a crime wave was sweeping over San Francisco. It was caused partly by the opportunity which the fire had given, and partly by the Schmitz administration which by its own example encouraged crime. Within two months there were nine murders and twenty-two robberies. The Japanese restaurants were among the first to be caught in this wave. Before the fire there were in San Francisco only eight Japanese restaurants which served meals to Americans. Following the earthquake, however, about thirty of these restaurants opened in the devastated districts, and for a time did a flourishing business with workingmen engaged in rebuilding the city. As early as June 25, 1906, the Exclusion League protested that many union men were patronizing these restaurants. With the plea, "White men and women, patronize your own race", the League unsuccessfully attempted to keep them from being frequented.

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When this failed, violence in many instances was resorted to; many restaurants were invaded and their property destroyed.[1]

Furthermore, Japanese stores were burglarized and one bank president murdered. The distinguished Japanese scientist, Dr. F. Omori of the Imperial University of Tokyo, while examining the ruined districts, was besieged with tomato cans and stones by a gang of hoodlums, one of whom was a post-office messenger. These assaults attracted but little attention in San Francisco. But they were immediately and widely reported in Japan, where they had a profoundly irritating effect.[2]

In the fall of 1906 another political campaign took place in which congressmen were to be elected. Of course the Japanese question became a popular issue. Both the Democratic and Republican State Conventions declared for the exclusion of the Japanese in no uncertain terms. On September 16, the Exclusion League held a "mass meeting," addressed by congressional candidates, at which it was announced that the membership of the League had reached a total of 78,500 and that its program had been endorsed by independent organizations composed of nearly four and a half million members.

On October 11, 1906, the School Board of San Francisco passed a special resolution which brought the anti-Japanese crisis to a white heat. As part of a well-organized plan, the School Board had first decided to establish separate schools for Japanese and Chinese on the day before the first convention of the Exclusion League was held (May 6, 1905). The legal right to segregate white from Mongolian school children in this manner was based on a school law which authorized school boards to establish separate schools for Indian, Chinese and Mongolian children, at their own discretion.[3] The law, however, did not mention the Japanese by name. Presumably, they were "Mongolians". The reasons which prompted the first action of the San Francisco Board were set forth in this resolution:

[1] *Immigration Commission Reports*, vol. 23, p. 200 *et seq.*

[2] For other instances of violence, see *Senate Document No. 147*, 59th Congress, 2nd session.

[3] Article X, Section 1662, *Political Code of the State of California*, p. 379.

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Resolved that the Board of Education is determined in its efforts to effect the establishment of separate schools for Chinese and Japanese pupils, not only for the purpose of relieving the congestion at present prevailing in our schools, but also for the higher end that our children should not be placed in any position where their youthful impressions may be affected by associations with pupils of the Mongolian race.

As this resolution was not carried out, it did not create the furor which similar action later aroused. The reason for the failure to carry out at once this policy of segregation was lack of funds. The Board of Supervisors, which had been petitioned for a new building in which to house the Orientals, asserted that it did not have the money necessary to erect it. The old system therefore was maintained. But on October 22, 1905, the Exclusion League voted unanimously to petition the Board to carry out this policy. During the discussion, it was established beyond question that the School Board, the members of which were appointed by the mayor, was under the absolute control of Schmitz and Ruef.[1] No further action could be expected until these bosses had given the word, and they would wait until their own interests would be served by a renewal of the anti-Japanese agitation.

On July 23, 1906, the schools, which had been closed by the fire, were opened with an attendance of 25,000. After a tour of inspection, the president of the Board of Education announced that there was very little over-crowding. He said nothing about the dangers of the Japanese. But nearly three months later, on October 11, the Board suddenly ordered all Japanese children, after October 15, to attend the Oriental school in Chinatown. The resolution was scarcely noticed in the San Francisco papers. At that time the city was occupied with the famous investigations which Heney and Burns were making of the music-master's administration. On November 15, Ruef and Schmitz were indicted for bribery and embezzlement. In addition a gubernatorial campaign was in progress—Gillett, the Republican candidate, was running against Bell, a Democrat.

[1] *San Francisco Chronicle,* October 23, 1905.

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Aroused by this school order, the secretary of the Japanese Association of America immediately protested to the School Board. Upon its refusal to modify the order, the secretary sent word to the newspapers in Japan. And it was the frenzied outbursts of Japanese opinion against a measure which it considered to be a treaty violation and a national insult, that first attracted the attention of the city of San Francisco to the act of its own authorities. The views of the Japanese government were brought to the attention of Washington by a telegram from Ambassador Wright in Tokyo to Secretary Root. On October 23, 1906, Mr. Root telegraphed Ambassador Wright that "The United States will not for a moment entertain the idea of any treatment of the Japanese people other than that accorded to the people of the most friendly European nations." How different the course of events might have been if this promise had been kept! Two days later Ambassador Aoki formally protested against the school measure to Secretary Root, on the ground that it denied rights expressly conferred by the treaty of 1894. The Japanese colony of San Francisco was also indignant. A mass meeting was held at which funds were raised to fight the measure in court. Meanwhile President Roosevelt dispatched Secretary of Commerce and Labor V. H. Metcalf to investigate the situation in San Francisco. In an effort to appease the ruffled feelings of Japan, President Roosevelt, in his annual message to Congress of December 3, 1906, denounced San Francisco's action in no uncertain terms: "To shut them [the Japanese] out from the public schools," he said, "is a wicked absurdity."[1] He then made two radical recommendations: (1) That an act be passed specifically providing for the naturalization of the Japanese; (2)that the statutes of the United States be amended so as to enable the President to enforce the treaty rights of aliens. Meanwhile Secretary Metcalf had proceeded to San Francisco, and, after investigating the situation, sent two reports to the President, the second of which was delivered to the Senate on December 18. In this latter report Mr. Metcalf

[1] *Messages and Papers of the President,* pp.7434-7436.

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discussed the actual number of Japanese in the schools, the anti-Japanese boycotts, and the anti-Japanese agitation generally.[1]

What, indeed, was the necessity for the School Board's action? Out of 25,000 school children in the city there were only 93 Japanese. Of these 68 were born in Japan and 25 in the United States. On the face of it, the charge that the Japanese were crowding out and holding back American children, was ridiculous: there were too few of them. However, if it were true that these Japanese were adults, their contact with American children might prove to be morally and intellectually harmful. This situation could have been remedied merely by fixing an age-limit applicable to all students in the schools. But the Board repeatedly refused to restrict the scope of the resolution in this manner, even after Roosevelt himself had suggested it. As a matter of fact, however, only two of the Japanese students were over twenty years of age, one being in the eighth grade and the other in the sixth. Only three were above nineteen, and four above eighteen. Colonel John P. Irish is authority for the statement that "no oral or written protest was ever made against the Japanese pupils by the parents of white pupils in those schools"; and "that no Japanese pupil in those schools was ever under the slightest suspicion of immoral or disorderly conduct"[2].

That the act of the Board was unwarranted was also proved by the attitude of the leading educators of the State. School principals in San Francisco, the superintendent of the Los Angeles city schools, the state convention of school superintendents, President Jordan of Stanford and President Wheeler of the University of California—all, in one way or another, intimated their disapproval of this drastic action. A number of chambers of commerce interested in developing trade with the Orient resented any measure discriminating against Japanese already here, although few of them favored unrestricted immigration.

[1] *Senate Document 147*, 59th Congress, 2nd session.

[2] *Oakland Tribune*, January 20, 1907; quoted in Johnson, *Discrimination Against the Japanese*, p. 23, a compendium of opinion in regard to this period.

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There was little moral justification for the School Board's order. But it did serve as an occasion for an outburst of feeling against the Japanese and as a warning to the East that Japanese immigration must be stopped. More important still, it enabled Schmitz and Ruef to make "martyrs" of themselves at a time when their other activities should have received the universal condemnation of the city.

Moreover, the action of the School Board in excluding the Japanese from the schools was attacked on the ground that it was unconstitutional. As we have seen, the Board derived the authority for its action from a state law which authorized school boards to establish separate schools for children of "Mongolian" descent. It was contended, in the first place, that the Japanese were not Mongolian. Secondly, it was asserted that the ordinance was an unreasonable discrimination against the Japanese in violation of the Fourteenth Amendment of the Constitution of the United States, which guaranteed to all persons the equal protection of the laws. It is improbable, however, that the mere establishment of separate schools for different races would have been declared unconstitutional provided *equal* facilities for study were afforded for both races. On this ground the Supreme Court has upheld the constitutionality of Jim Crow cars, etc.[1] Even if separate schools were sustained on the general principle that the accommodation afforded the Japanese was *equal* to that given Americans, the San Francisco ordinance would not have been necessarily valid because of the location of the Oriental school. This school was set up in the midst of the Chinese settlement; but the Japanese population was scattered all over the city. In the words of Secretary Metcalf, "If the action of the Board stands, and if no schools are provided in addition to the one mentioned, it seems that a number of Japanese children will be prevented from attending the public schools, and will have to resort to private instruction." In other words, the ordinance would actually result in depriving them of public school facilities.

[1] *Plessy v. Ferguson*, 163 U. S. 537; *McCabe v. A. T. & S. F. Ry.*, 235 U. S. 151; *Berea College v. Kentucky*, 211 U. S. 45; Freund, *Police Power* (1904), sec. 698.

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On that ground, it would have probably been pronounced invalid, although this legal defect could have been remedied by increasing the number of separate schools for the Japanese.

In the third place, it was asserted that this ordinance and the law upon which it was based violated the treaty of 1894 between the United States and Japan. This treaty granted most-favored-nation treatment to Japanese in the United States in all "rights of residence";[1] and it was contended that the right to attend public schools was a "right of residence". If a state law stood in the way of a treaty which was the supreme law of the land, the state law must be set aside.

Finally, it was said that the federal government had a right to control action of the schools when they involved the foreign relations of the United States, especially because it had contributed to the support of these schools by the grant of public lands on the understanding that they be conducted in accordance with the Constitution and treaties of the United States.

In order to settle these legal questions, President Roosevelt instructed the attorney-general, acting through United States Attorney Devlin, to bring an action against the School Board in the courts. Consequently, two suits were entered, on January 17, 1907: one was brought in the supreme court of California in the name of a Japanese child for the purpose of obtaining a writ of mandamus to compel his admission into the public schools; and the second was brought in the federal circuit court, where the federal government asked an injunction against the School Board restraining it from excluding Japanese pupils.

After the message of the President to Congress in which he denounced the action of San Francisco as a "wicked absurdity", the city became thoroughly incensed, although at first it had passed over the incident in silence. The *San Francisco Chronicle* scored Roosevelt's message by saying, "The President has degraded his position by assertions which are untrue, assumptions which have no basis in fact, recommendations which can only excite ridicule, implied threats which he has

[1] Malloy, *Treaties, Conventions, etc. of the United States*, p. 1030.

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no power to execute. . . ."[1] California congressmen also showed their belligerency by again introducing bills favoring exclusion.[2]

As a result of the great furor stirred upon in the West, Roosevelt retreated from his original position. In a special message transmitting Metcalf's report to the Senate, he admitted that "there would be no objection whatever to excluding from the schools any Japanese on the score of age."[3] Furthermore, it was persistently rumored that negotiations were in progress between the President and the Japanese government which would settle all points of dispute between the two nations, including the most pressing problem of immigration.

But the Exclusion League would have nothing to do with a diplomatic form of settlement; it demanded an ironclad exclusion law. Moreover, its feelings were deeply hurt by the intrusions of the federal government into what it considered a purely municipal affair. Just before Christmas, a protest meeting was held which was presided over by none other than the mayor himself. This meeting, supposedly held under the auspices of the Labor Party and the Exclusion League, was an evidence of the connection between Schmitz and the anti-Japanese agitation. The mayor did not confine himself to calling the federal government names. He attempted to use the whole meeting—in fact, the whole agitation—to defend himself against the criminal charges recently made against him. The *Chronicle* was vehement in its denunciation:

> In a speech the other evening to a meeting which he should never have been permitted to address, Mayor Schmitz lugged in an attempted defense of himself which was utterly out of place, and in the course of his remarks he said: "I find myself against a bottled-up judge." A condition of affairs under which an indicted criminal presumes to thus attack the judge before whom he is to be tried, is outrageous.[4]

[1] Editorial, December 5, 1906.

[2] H. R. 160 and H. R. 8975, 59th Congress, 2nd session.

[3] *Senate Document No. 147*, 59th Congress, 2nd session.

[4] Editorial, December 8, 1906.

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In view of the hubbub raised on the Pacific Coast and in Japan over the San Francisco controversy, it was not in the least remarkable that the European press predicted that war between the United States and Japan was imminent. The President was well aware of the seriousness of the situation. By this time he realized that Japanese immigration must be stopped. In a letter written November 27, 1907, to Secretary Metcalf, the President declared that in a conversation with the Japanese Ambassador he had expressed the wish that the Japanese government "would stop their coolies, all their working men, from coming either to the United States or to Hawaii."[1] But the President added that "the great difficulty in getting the Japanese to take this view is the irritation caused by the San Francisco action." Roosevelt set out to eradicate this cause of discord.

Consequently, in the latter part of January, 1907, Mr. Roosevelt requested the San Francisco Board of Education to come to Washington and confer with him in regard to a settlement which would be agreeable to all. In the meantime, he suggested that all anti-Japanese agitation be suspended, in order not to prejudice a diplomatic settlement of the immigration question.

It took Schmitz a week to decide whether to permit the School Board to go to Washington, and then he decided to go with them. Word was circulated that he, an official charged with disreputable crimes, was to go to Washington to defend the children of San Francisco against the Japanese! In the first week of February, Schmitz and his docile Board left for Washington to be away until March 6. According to press reports, members of his following "were frankly delighted with the prospects of the indicted Mayor returning from the national capital covered with glory, and acclaimed the savior of the country from a war with Japan."[2]

[1] This letter was made public for the first time when it was placed on exhibition in the New York Public Library by the Roosevelt Memorial Association, in January, 1922. It was published in *The New York Times*, January 11, 1922.

[2] Hichborn, *op. cit.*, pp. 127-128.

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But the Exclusion League refused to silence its guns, as the President had requested. On February 3, a meeting was held at which President Tveitmoe scored Schmitz for obeying the "command of President Roosevelt." In referring to the suggestion that the Japanese be excluded by treaty, he declared, "Exclusion by treaty never excludes. Roosevelt and Root may hedge and scheme and try to throw dust in the eyes of the people of the Pacific Coast, but we know what the Oriental invasion means." Nothing short of an exclusion law would satisfy these Chauvins of the West. While the Washington conference was in session, Tveitmoe telegraphed Schmitz not to desert the laboring man. "If President wants to humiliate the American flag," he wired, "let him tell California's Governor and Legislature to repeal the law, but he cannot coerce free Californians to bow in submission to the will of the Mikado. Roosevelt's power will not make one white man out of all the Japs in the Nipponese Empire. California is the white man's country, and not the Caucasian graveyard'"!

Not to be outdone by the Exclusion League, the California legislature likewise showed complete disregard for the President's request that the agitation against the Japanese temporarily cease. The 1907 session was heaped full of anti-Japanese bills. There was the Sanford resolution protesting against Roosevelt's suggestion that Japanese be naturalized; the Black resolution in favor of an exclusion treaty; the Caminetti bill providing that Japanese be expressly included among those for whom separate schools might be established; the Keane bill providing for a referendum on the question of exclusion; and the Drew bill prohibiting land ownership by aliens. On March 11, Governor Gillett telegraphed to President Roosevelt to find out what his attitude was toward this legislation. The President replied:

I earnestly deprecate the passage of any legislation affecting the Japanese. The National Government now has the matter in hand, and can in all human probability secure the results that California desires, while at the same time preserving unbroken and friendly rela-

[1] *San Francisco Call*, February 11, 1907, as in Johnson, *op. cit.*, p. 13.

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tions between the United States and Japan . . . Any such action as that you mention would merely hamper the National Government in the effort to secure for California what only the National Government can secure.

In the meantime the President had been endeavoring to win the San Francisco School Board, then in Washington, over to his point of view. He declared that the national government would "meet every reasonable wish and every real need of the people of California or any other State in dealing with the people of a foreign power."[1] At the same time, he insisted that the federal government was charged exclusively with the conduct of foreign relations, and that it could tolerate no action on the part of a state or municipality which impaired this national function. As a result of this conference, Schmitz and the School Board capitulated, despite the intransigence of the labor leaders in San Francisco. The solution agreed upon was: (1) that the School Board would rescind its resolution ordering Japanese children to attend the Oriental School; (2) that the President would prevent Japanese in Hawaii, Canada and Mexico from entering the United States on passports issued by Japan only to those destinations; (3) that the President would undertake to restrict Japanese emigration coming directly to the United States from Japan, by diplomatic means; (4) that the federal government would withdraw the suits instituted to test the constitutionality of the California school law.

After agreeing to this settlement, the School Board returned to San Francisco, and on March 13, 1907, rescinded its school resolution in so far as it applied to the Japanese. This was followed by the dismissal of the suits against the law by District Attorney Devlin. Finally, the President undertook to stop emigration from Hawaii, Canada and Mexico. It will be remembered that the chief complaint against Japanese immigration concerned that from Hawaii. Once there, Japanese immigrants hitherto could not be restrained from coming to the United States because the island was American territory. If this immigration could be stopped, therefore, the greatest

[1] *Theodore Roosevelt—An Autobiography* (1913), p. 379.

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grievance against the Japanese would be removed. As a final part of the compromise Congress inserted a provision in the Act of February 20, 1907,[1] which authorized the President to refuse entrance to immigrants who, to obtain entrance to the mainland, were using passports originally issued to "any country other than the United States." Under the authority of this act, the President issued the proclamation of March 14, 1907, which ordered that "Japanese or Korean laborers, skilled and unskilled, who have received passports to go to Mexico, Canada or Hawaii, and come therefrom, be refused permission to enter the continental territory of the United States."[2]

This executive order solved only half the difficulty. It had nothing to do with the immigration of Japanese coming *directly* from Japan to the United States. As we have seen, the President was attempting to stop this immigration by an agreement with the Japanese Government. But Ambassador Aoki met his advances with the argument that the Japanese should be treated exactly on the same footing as the immigrants of any other nationality. But the President did not let this logic trouble him. In reply he said that "what we had to do was to face facts . . . and that it was not possible to admit Japanese laborers into the United States."[3]

Negotiations continued fruitlessly throughout the summer and into the fall. But the Japanese government refused to agree to an exclusion treaty. In November, however, Foreign Minister Hayashi announced that the Japanese government would itself restrict emigration to the United States—a promise which had been made in 1900. This announcement apparently was not put into effect because of the opposition of the emigration companies. At any rate 30,226 Japanese entered this country, including Hawaii, in 1907—twice as many as in 1906. They also came in from Canada on bogus passports, which Japanese already here would mail to them for prices ranging

[1] 34 *Stat.* 898, c. 1134, par. 1.

[2] See Rule 21, Immigration Regulations, Department of Commerce and Labor, Doc. No. 78, *Immigration Laws and Regulations of July 1, 1907* (1907).

[3] Quoted from a letter to Secretary Root, July 13, 1907.—Bishop, *Theodore Roosevelt and His Time, Shown in His Letters* (1920), vol. II, p. 65.

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from five to twenty-five dollars. It was also charged that despite the order of March, 1907, 10,000 Japanese had come in from Mexico within the last few months. These facts and these rumors increased the uneasiness of the Pacific Coast until finally open agitation against the Japanese broke out anew. As early as July, 1907, the San Francisco authorities had refused to grant licenses to Japanese employment agencies—a measure which was doubtless unconstitutional. Exclusion bills also became thick in Congress. At first they were laid aside at the President's request. But there was a limit to the patience of Congress. In February, 1908, hearings on the subject of Japanese immigration were opened. War-talk was also revived. Rumors were broadcast that Japanese warships were hovering near Hawaii. The mayor of Portland publicly announced that Japanese spies had secured detailed maps of the roads and pipelines leading into the city. A Japanese "spy" was arrested at Fort Rosecrans. Captain Richmond Pearson Hobson wrote a series of articles estimating the number of men Japan could land on the Pacific Coast. It was reported that Japan was manufacturing more munitions than at any time since the Russian war.

President Roosevelt's decision to send the fleet around the world intensified the crisis. There were doubtless many other reasons for this unprecedented action, taken without consulting Congress. But the President admitted that the Japanese problem was the crux of the whole matter. In a letter to Secretary Root, he said, "I am more concerned over the Japanese situation than almost any other. Thank Heaven we have the navy in good shape. It is high time, however, that it should go on a cruise around the world."[1] The fleet left for the Pacific in December, 1907, in the midst of the negotiations between the State Department and Japan.

For some reason which has never been satisfactorily explained, the Japanese Ambassador at Washington, Viscount Aoki, was now recalled. On his way home he gave out a very important statement in San Francisco in which he said that

[1] Bishop, *op. cit.*, p. 64.

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diplomatic negotiations over the immigration question were at an end, and that the Japanese government itself had undertaken to regulate immigration.[1]

This vague intimation of the "Gentlemen's Agreement" was not confirmed by the State Department. In fact, little credence was placed in the statement of a recalled ambassador who later was dismissed from the service. And the appointment of Baron Takahira as the next ambassador led to the supposition that negotiations would be reopened. The press reported an interchange of notes at the end of December and the first of January, 1908, after which, on January 25, Washington pronounced the position of Japan toward immigration "satisfactory." In all probability, these notes confirmed the "Gentlemen's Agreement," by which Japan undertook voluntarily, and upon her own responsibility, to restrict emigration to the United States. But if an agreement was reached at that time, the public was kept in the densest ignorance—a fact proved by the continued agitation in Congress for the passage of exclusion laws.

Another indication that some understanding had been reached came in the latter part of January, 1908, when the Japanese government announced that after February 1 it would permit emigration to Hawaii only of those laborers returning to resume a former residence, or of immediate relatives of those already there.

It is apparent, therefore, that great secrecy surrounded the negotiation of this mysterious agreement. At the same time a similar understanding was being reached between Canada and Japan, concerning which a public statement was made. Japanese immigration had sorely vexed some of the provinces of Canada—particularly British Columbia.[2] About 1900 Canada and Japan entered into an agreement by which the Emperor promised to limit emigration to Canada. But this agreement had been repeatedly violated at the instigation of such firms as

[1] *San Francisco Chronicle*, January 5, 1908.

[2] On the Japanese in Canada, see W. G. Smith, *A Study in Canadian Immigration* (1920), p. 156 *et seq.*

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the Canadian Pacific Railroad, which wished Japanese labor for construction purposes. In January, 1907, there were about 7500 Japanese in British Columbia, but in the following ten months, 4,429 entered.[1] This great increase led to race riots in Vancouver, and finally to the dispatch of the Canadian minister of labor, Rodolphe Lemieux, to Japan in the latter part of October, 1907, to bring about a diplomatic settlement of the question. On December 23 of the same year, Foreign Minister Hayashi sent a note to Lemieux which defined the basis on which the Japanese government agreed to restrict immigration to Canada. Hayashi insisted that the treaty between the two countries guaranteed to Japanese subjects "full liberty to enter, travel and reside" in any part of Canada; but that the Japanese Government would not insist upon the right when its exercise "would involve disregard of special conditions" which may prevail there "from time to time." For that reason the Japanese government would undertake to meet "the desires of the government of the Dominion as far as is compatible with the spirit of the treaty and the dignity of the state."[2] This was interpreted to mean that only 480 Japanese emigrants might go to Canada annually. This statement illustrates the precarious and the indefinite nature of an agreement presumably similar to that entered into with the United States at approximately the same time.

Although the agreement with the United States was apparently negotiated in January, 1908, the first official announcement of it did not appear until the annual report, July, 1908, of the United States Commissioner-General of Immigration. In this report it was stated that "an understanding was reached with Japan that the existing policy of discouraging the emigration of its subjects of the laboring classes to continental United States should be continued and should, by cooperation of the governments, be made as effective as possible. This understanding contemplates that the Japanese Government shall issue

[1] Report of 1909, W. L. MacKenzie King, deputy minister of labor, III-VII, Oriental Immigration, 9-10 Edward VII, Sessional paper No. 36, p. 77.

[2] *Ibid.*, pp. 99-100.

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passports to continental United States only to such of its subjects as are non-laborers or are laborers who, in coming to the continent, seek to resume a formerly-acquired domicile, to join a parent, wife or child residing there, or to assume active control of an already possessed interest in farming enterprise in this country. . . . With respect to Hawaii, the Japanese Government of its own volition stated that, experimentally at least, the issuance of passports," to laborers coming there would be limited to former residents or relatives of residents.[1]

It had required seven years to bring about the prohibition of Japanese immigration. The first step had been taken in 1900 when Japan voluntarily prohibited the emigration of laborers to the United States. Upon the failure of this voluntary restriction, President Roosevelt took the second step, in March, 1907, when he prohibited the emigration of Japanese from Hawaii, Mexico and Canada without proper passports. The third step came in December, 1907, when Japan entered into a Gentlemen's Agreement with Canada, which affected materially the United States, because it made smuggling over the Canadian border less probable. The fourth step came when an informal agreement to prohibit emigration to the United States was reached—an agreement which carried out and strengthened the restraints imposed in 1901, and which also prohibited, at least temporarily, emigration from Japan to Hawaii. Thus by 1908 the emigration of Japanese laborers to the United States, to Canada and Hawaii had been severely restricted. As a result the San Francisco school controversy came to an end, and the agitation which had accompanied it temporarily died down.

There doubtless had been an economic basis for the early beginnings of the anti-Japanese movement in California and on the Pacific Coast. Japanese had come into California and Washington by thousands. They competed with the white man as white men compete with each other. But they differed from other immigrants in that they worked harder than most

[1] *Reports of Department of Commerce and Labor,* 1908, "Report of Commissioner-General of Immigration, pp. 221-222.

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laboring men, possibly had a lower standard of living[1], and were of a different skin. Their ignorance of American customs and their disposition to organize into "gangs" made possible their exploitation by contractors, often resulting in the undercutting of white men. San Francisco was in the hands of the unions, the policy of which was to diminish the supply even of white labor. Hence their hostility to any immigration was natural. There is little evidence, however, that the Japanese were actually driving white men from employments. The menace from the Japanese lay not in the present, but in the future. From this standpoint, the attempt to prohibit immigration, the end which the San Francisco agitation had in view, was legitimate.

But even this did not justify the tactics employed by the Exclusion League and Schmitz's henchmen. Such politicians were perhaps not expected to be adequate judges of the *means* to be used. They may have been ignorant of the grievous effects of their appeals to race prejudice, their boycotts, and their violence, on the relations between America and Japan. But it was not so much ignorance on the part of these politicians as it was deliberate intent, which led them to choose the means they did. Schmitz used the School Board and the Exclusion League to shield himself, though unsuccessfully, from the Grand Jury. The order of the School Board came out only a few weeks before his indictment. But the agitation arising from it and his junket to Washington to "keep the country out of war" did not occur until afterward. Even leaders in the demand for exclusion denounced Schmitz's manipulation of the issue. On March 12 the *Chronicle* declared:

Schmitz had no business to go near Washington at all. He was not invited, but butted himself in with the obvious intent to divert public attention from his impending trial for alleged boodling. Schmitz had nothing to do with the action of the Board of Education except on the

[1] The Japanese standard of living is lower than that of the north-European immigrant, but probably no lower than the south and central European; see *Reports of the Immigration Commission,* vol. 23, pp. 137-138.

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assumption that its members are mere puppets arranged to jump when Schmitz pulls the wires. Even if that is the case, there was no need of making an indecent exposure of it.[1]

Although Schmitz failed personally to profit by the anti-Japanese agitation, he established a precedent which less desperate politicians since have followed.

Inasmuch as the Japanese were for the most part located in the cities, the agitation of 1905–1907 originated largely with the labor unions. Those Japanese who had gone to the country were hard and willing workers, during a period of labor scarcity; as yet they were willing to remain wage-earners. Consequently, the farmer had little complaint to make against them. In succeeding years, however, the Japanese, because of increasing immigration, city boycotts, and accumulating capital, have moved *en masse* to the country and have begun to compete with the white farmer. As a result, the protest against the Japanese on the Pacific Coast during the last ten years has come more and more from the rural districts and interests and it has taken the form of legislation attempting to drive the Japanese off the land back into the cities. This phase of the agitation will be discussed in the concluding section of this article.

[1] The *Los Angeles Times* (quoted in Johnson, *op. cit.*, p. 18) in referring to the indicted mayor's declaration that if necessary he would lay down his life in battle against the Japanese, caustically remarked: "It is a notable fact that his Honor has never laid down anything of value. His promise, however, would almost reconcile anyone to a war with Japan." The *Los Angeles Express* also declared that "nothing less than the hanging of the Japanese by the toes would satisfy some of the anti-Japanese agitators in San Francisco."

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THE METAPHYSICS OF DUGUIT'S PRAGMATIC CONCEPTION OF LAW

"THE strongest is never strong enough to remain forever master unless he transforms force into law and obedience into duty" said Rousseau,[1] a truth which every subsequent system of jurisprudence has implicitly accepted, and explicitly attempted to account for. As a broad base for the rest of their building, the most successful of these systems generally accepted Rousseau's doctrine, too, of a general will toward the protection of natural rights always in a form more or less absolutistic, according to the purposes which the systems were to serve. German jurisprudence, for example, on the whole arrived at an apologia for an absolution as rigid as Rousseau's own, though its derivation of the force of law was based on a theory of individual rights none the less rigid for having been obtained at second-hand through Kant. The classical French jurisprudence started with the assumptions of the Declaration of the Rights of Man only to find itself led by an irresistible logic to the unquestionable and legally final sovereignty defined by the Constitution of 1791. In England the Benthamite theory took authoritative form in Austin with something of the same logical rigor, though British practice and British theory have ever been two different things altogether.

Until the latter part of the nineteenth century, however, the sovereignty of the state, based on the representative relation in which it stood to the general will, was considered to be a dogma necessary to any juristic system. No other explanation of either the origin of rights or the bases of political obligation found any wide-spread acceptance. With the rise of the historical school of jurisprudence, however, the idea of what may be roughly called the Social Compact theory was subjected for the first time to a searching critique which was able, through a

[1] *Du Contrat social,* chap. ii, bk. I.

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new approach to the problem, to force reconsideration of the ideas both of natural individual rights and of absolute sovereignty. At least the beginnings of sociological jurisprudence were laid when the emphasis was shifted from the *a priori* derivation of laws to their historical origins. The attack there begun on the metaphysical school of jurists has taken several very interesting directions in modern theory and has grown in strength as much as in complexity. It is worth while noting, however, that most legal systems in present application retain the theory of sovereignty as the basis of the coercive power to command and that the greatest jurists of the last decades have numbered among them those who like Jellinek, Ihering and Stammler sought to give a sound philosophical (what M. Duguit derides as metaphysical) base to the superstructures they have reared. Whether realistic or idealistic in temper, these systems agreed upon the necessity of accounting for legal phenomena by a method which contained *a priori* as well as descriptive elements.

But just as in eighteenth-century France and in the doctrines of Rousseau the intellectualist explanation of the nature of law found its classical statement, so in modern France once more and in the theories of M. Léon Duguit these doctrines meet their most elaborate rebuttal. They are attacked, so to speak, from top to bottom. The classical French jurisprudence rested its entire weight on two pillars and an arch; on the one side natural rights and on the other absolute sovereignty joined together to support the entire political structure by the arch of a social compact. M. Duguit says that the pillars form an unreal and inadequate support, and he boldly sets about pushing them over without evidencing the least fear of bringing the state in ruins on his own head. Not content with his work of destruction, he goes so far as to attack the foundation of every such system by declaring that a jurisprudence which rests on any metaphysical assumptions whatever is built on sand and cannot in the nature of things remain long standing. The particular metaphysical foundation which he spends most of his energy in wrecking is the doctrine of some sort of general will which expresses itself through the acts of a state-person.

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His own doctrine he characterizes as "*positive et rêaliste.*" In place of any and every metaphysical conception of rights deriving from relationship of wills, he proposes the fact of obligation (*devoir*) necessitated by another fact, social solidarity (*la solidaritê sociale*). These notions are not abstractions of an intellectualistic order but, according to M. Duguit, scientific descriptions of social phenomena which act under laws in some respects analogous to those of the biological organism. Not, indeed, that these laws are biological, for they exist only through individuals "conscious of their acts and of the motives which determine them."[1] Still, as biological laws are founded on "the fact that constitutes the organism," so are social norms based on "the fact that is society."[2] Scientific jurisprudence must ground itself on these facts as ultimate and not seek for them a metaphysical apologia about which endless dispute is possible. Social interdependence, with its roots in an organic division of social functions such as M. Durkheim has described in "*La Division du travail social*", exists as a state of fact independent of our will. That is, at least, in so far as we can treat it scientifically; the ultimate nature of the will about which the philosophers wrangle so tediously and so vainly is completely outside the possibility of scientific enquiry; the most that we are justified in asserting about our acts is that we are conscious of the ends toward which they are directed.

From the outset M. Duguit's effort is to stay within the bounds of scientific method which he has set for himself. This method, as he interprets it, will not permit him to set up ghostly essences behind actual phenomena. The state-person has no more real existence than any other such abstract concept; all alike are qualified by what he calls "the inanimity of the doctrines, whatever they be, which wish to give a philosophical justification of political might. The truth is that political might is a fact which has in itself no character of legitimacy or illegitimacy. It is the product of a social evolution."[3]

[1] *Traité de droit constitutionnel* (2ème éd.), vol. I, p. 24.

[2] *Idem.*, p. 19.

[3] *Manuel de droit constitutionnel* (3ème éd.), p. 23.

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On such a reading of the facts of human society it is apparent that the question of an ideal morality not only does not arise; it is ruled out of court in advance. Consequently, when M. Duguit attacks all subjective rights and proposes to substitute for them the notion of *devoir* as the ground for the *règle de droit*, of *droit objectif*, he is not to be misconceived as meaning by *devoir* moral obligation in any sense. He himself is very anxious to avoid this fundamental misconception because it would obviously introduce the very metaphysical difficulties which he believes he escapes through a positivist treatment of social norms. "Likewise," he says, "I part company [*j'écarte*] with the notion of duty [*devoir*] conceived as creating a character proper to certain wills, a sort of negative power which would make of these wills subordinate wills. . . . The notion of duty so conceived is a notion of a metaphysical order just as much as the notion of right [*droit*]."[1] The true nature of the obligation which causes the rulers as well as the ruled to submit to the rule of law is to be found in that same *solidarité sociale* arising out of the organic interdependence of the social structure, which equates itself in his view with the necessity of natural laws assumed by all scientific generalizations as fixed and determinate. Men obey juridical norms because they have to.

"For us, to speak of a norm as obligatory as a juridical norm means simply that at a given moment, in a group under consideration, if this norm is violated the bulk of the people [*la masse des esprits*] understands that it is just, according to the feeling [*sentiment*] of justice that it forms for itself at this moment, that it is necessary for the maintenance of social interdependence, that what there is of conscious force included in the group intervenes to repress this violation. To give another meaning and another value [*portée*] to the obligatory force of a rule of law, is to leave reality in order to enter into metaphysical hypothesis."[2]

I have gone to some length to show the anti-intellectualist

[1] *Traité de droit constitutionnel* (2ème ed.), vol. I, p. 18.

[2] *Op. cit.*, p. 65.

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bases of M. Duguit's doctrines not only because of their obviously pragmatic temper, but and because they are fundamental to the rest of his system and because any shorter exposition of them would, I feel, be an unfair point of departure for such later criticisms as I might venture. If it be possible to formulate laws for society as it is for biology, as M. Duguit maintains, while remaining strictly within the limits of descriptive generalization from observed facts, he may fairly claim to rule out metaphysical considerations and ethical notions. On the other hand if any analysis of human action which leaves these latter out of the reckoning can be shown for that very reason to fail to account for the facts, we may fairly reject its claim to scientific adequacy.

I propose in this connection to consider several of the social "facts" which M. Duguit offers as requiring and indeed permitting no further explanation than is given by "social morality" and by the methodology of the French Social Realists so-called; then to notice very briefly the account he gives of certain problems of constitutional law treated in the light of *droit objectif*. Among the facts he accepts as such, let us examine the notion of the basic *solidarité sociale*, its relation to the other fact of rulers who hold power *de facto* but are "bound" to act in the interests of social solidarity, and finally in the factual category, the "fear" which motivates obedience. Among the general problems offered by the *droit objectif* theory, let us look into the denial of "rights", specifically the state's right to command, and proceeding from the treatment of sovereignty involved in this, to the nature of the responsibility of the state under law.

When M. Duguit presents us with the fact of social solidarity as a sufficient juridical stem to support all the branches of government and keep them growing and bearing lawful fruit, it is only fair to ask what he means by the nature of such a fact. It is evident that if society were completely organic in its functioning, social solidarity would operate ruthlessly toward the suppression of any disruptive influences operating within it. The social reactions in which lie M. Duguit's ultimate punitive sanctions would operate with the sureness of the responses of

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any nervous organism to unpleasant stimuli, and would suppress the disturbances or perish through failure. But an examination of the historical development of our own society or of a slice out of any particular period of the past will serve to convince us, I believe, that quite as good a case might be made out for the laws of social disruption as for those of social solidarity. The fact of forces working toward the breakdown of the rigidity of the *status quo* is on a par with the fact of forces working for its maintenance, and might be shown to be just as necessary to what we call its normal development or progress. In the society of a world order, nationalism is at the moment so powerful a factor militating against *solidarité* as to make some observers despair of the possibilities of economic reconstruction. Are the class struggles within the nation less disruptive in their results?

Now it is true that *droit objectif* need not equate the preservation of the *status quo* with social solidarity any more than it need speak of progress.[1] It remains none the less true that though social interdependence may make men realize the need for social solidarity it does not create that desideratum as a state of fact. The fact surely is that social solidarity is precisely one of those ideal ends which at the same time exist as great needs of which men are conscious and as consummations all the more devoutly to be wished because they can never be even approximately realized. In the light of what we know of the nature of such ends, our "fact" turns out to be one of the most metaphysical order imaginable, leading us straight on to all the moral issues it was claimed we should avoid by its admission.

M. Duguit's own treatment of this convenient "Open, Sesame" is a tacit recognition of the ideal character of his so-called fact. If the obligation to act always in the interests of social solidarity were actually binding on the rulers who hold the force simply from the organic nature of society, there

[1] Speaking of progress and decline: "A scientific social theory can find no meaning in such terms. It can only point to significant difference." — *Law in the Modern State*, Author's Introduction, p. xxxvi. Even the significance of the difference may be questioned.

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would not be the necessity M. Duguit so strongly feels to exert his efforts toward bringing about government in France, or elsewhere, "*sous la règle de droit.*" That, too, would exist as a fact. Evidently the rule of law is actual only in so far as it is an ideal realized through human exertion by M. Duguit's efforts and those of all the rest toward attaining it and maintaining it.

When we are told too, and on almost the same page, that "" political power has no character of legitimacy or illegitimacy. It is the product of a social evolution";[1] and yet that "like individuals the rulers have juridical obligations founded on the social interdependence",[2] we may think that social solidarity has assumed a significance more mythical than metaphysical. The rulers are simply those who possess for a variety of causes the power to impose their wills, and this, as M. Duguit reiterates time and again, is "a unique fact that one finds always . . . in all the social groups which are qualified as states—individuals stronger than others who will and who can impose their will on the rest."[1] Still these rulers who "possess, by definition, the greatest force existing in a given society . . . are then obliged, by the rule of law to employ this greatest force at their disposal for the realization of social solidarity."[2]

Unquestionably the rulers of a modern state do find themselves obliged to use the power they possess *de facto* in a *de jure* manner. But it is because political power is constituted, contrary to M. Duguit's assumption, in a manner which gives it a legitimacy in the eyes of the governed *as political power.* From a juristic standpoint it is surely a jejune explanation of the character of government under law to offer in complete explanation of its origin and character the so-called fact of social solidarity, and then to offer as the possibility of that social solidarity the assumption of government under law as still another fact. The process savors of the conjurer's bag of tricks. By a brilliant *tour de force* one may indeed produce almost anything at all from this simple combination: for into

[1] *Manuel,* p. 23.

[2] *Ibid.,* pp. 32-33.

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la règle de droit and *la solidarité sociale* have been put all that may be subsequently required of them, including an *a fortiori* obligation upon the holders of the greatest force never to misuse it.[1] The possibilities of this *petit jeu* are at least equal to those of Rousseau's manipulation of *la volonté générale*, which, indeed, it suspiciously resembles.

Let us, if we are to accept M. Duguit's "facts", admit of them at least that they are facts of a highly metaphysical order. M. Duguit thinks that his rulers are bound by functional necessity, but rulers have had a most curious way of interpreting their functions and that necessity. They have at times appeared to believe they have served as a directive intelligence and will for the social organism and have manifested a remarkable conviction in freedom of this will to choose the worse alternative. Governments that hold force *de facto* have either been forced as Rousseau said "to transform force into law or obedience into duty" or they have made the most of the brief interval in which they were left in possession of force to make hay before the storm broke. The latter alternative has been chosen just as much as the former. Admittedly if the rule of law become a fact, the rulers must act in a general way in the interest of the social groups they govern. But the rule of law, as I have pointed out, is at best only a very imperfectly realized ideal aim, a moral end, and not a fact.

If it were merely of a factual order and as such were our only criterion, we could offer no criticism of any specific legislative or judicial action, for each one would be on a basis of absolute equality as fact. Our attitude would be that of the chorus in a Greek tragedy, a chorus, however, which was stripped of even its privilege of moralizing. We might describe; we might wonder; but until we could offer more useful explanations of the social norms at the back of laws than simply the declaration that they are, they have been, and they will be, we should never be privileged to adopt any attitude of critical regulation. The very basis of common law, continuity of principle combined with flexibility of concrete application,

[1] *Manuel*, pp. 32–33.

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would vanish in an empty attempt to give judicial interpretation to every social norm whose character was that its violation would produce a "*réaction sociale*".

We must, I believe, seek the reasons that underlie the reactions of a given society even at the risk of being dubbed metaphysicians, though I should hold that our search is only in the interests of a scientific adequacy not content to be put off with words. Into the nature of these reactions themselves M. Duguit does not offer to inquire, but he does vouchsafe an explanation why men obey the norms which they sanction. It is possible that we may derive more than a hint of what the implicit nature of the sanctions is from the character which he gives to the reasons for obeying them. The explanation takes this form: first of an attack on the traditional conception that implies the existence of a political power imposing its commands because it represents a will superior to the wills of individuals. This will is non-existent because, *ex hypothesi*, it is a metaphysical abstraction. Even were it a real will it would not have the *right* to impose itself upon other wills, for all wills says M. Duguit are equal, an assumption for which he no doubt would invoke the all-compelling power of facthood. There is, then, no such really existent political power. On the contrary, "that which is a fact is on the one hand the belief that this political power exists, and on the other hand the material possibility in a given group for certain individuals called government to impose their will by the employment of force." The only new thing in this statement is the admission that there is at least a myth which remains tolerably obstinate as a part of the general faith, a myth that such a political power as M. Duguit has discredited does nevertheless exist. But his point is that it is on a par with other exploded myths, which men still cling to. The fact is always "*la plus grande force*" "which imposes itself by material acts of constraint or by the fear which it inspires."

Here we have baldly stated the nature at least of obedience. M. Duguit talks at length elsewhere of "*le sentiment de sociabilité*" and of "*le sentiment de justice*" as sanctions or as ele-

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ments from which social reactions are derived.[1] There is no mistaking them now, to be sure, for those vulgar and ancient metaphysical claims of rights, for the true nature of their application is force, naked and no whit apologetic, and the reason men obey them is simple fear. "This fear is always a fact of the greatest force and I shouldn't say that I slight it, since it is, on the contrary, the point of departure of all my [succeeding] developments."[2]

One would say that such a commitment must be conclusive. Here is the "fear theory" in as unabashed statement as ever it was given by Thrasymachus or hard-reasoning old Hobbes; acts of government are acts of force, and men obey because they must. Political power is amoral, even unmoral. This is parlous close to metaphysical and moral anarchy, and from the pen, too, of the champion of the rule of law. Some of Duguit's French colleagues who can see no possible reconciliation of the two doctrines have not hesitated to call him "*l'anarchiste de chaire*," but he is not one to be frightened by words. If his use of facts smacks of the conjurer, his *volte-face* here is not less worthy of the acrobat. "*Soit*" he rejoins to their pleasantry; anarchist, if an act of government is to take its legitimacy from its origin; but jurist if it is to be tested by its end, i. e., by its conformity with "*droit social*". In whatever hands power resides, its use is legitimized only in so far as it secures *solidarité sociale* or, as he is now prepared to state it, in so far as it assures the public services. A legal act is one that performs a social function, a juridical act is one that secures this performance.

Surely this is very dubious sociology; it is even more certainly not helpful jurisprudence. It is hopeful, of course, that M. Duguit at last recognizes the end as a moral norm, even in this left-handed manner; but it is equally hopeless to attempt a system of jurisprudence apt for modern society without giving its declarative and interpretative organs a definite locus. Who, pray, is to decide whether an act of government is in

[1] *Traité* (2ème éd.), vol. I, ch. iv, *passim*.

[2] *Ibid.*, p. 498.

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conformity with an objective social law, unless it be a power legitimized as to its own existence by community consent to its arbitrament? Otherwise social reaction may follow social reaction in a headlong, violent descent to the *bellum omnium contra omnes*, sanctioning not the rule of law but rulerless anarchy. Were there space, it would be interesting to examine M. Duguit's little apologia for the violence of feudal ages, as *à propos*. The essence of it is that society was bound together by the notion of feudal obligation in spite of violence, which in itself was a rather healthy manifestation of vigorous group life. But even on the test of a pragmatic ethic of survival, a political system which failed to give the necessary power of command and decision to any one arbiter is *dêmodê*, to say the least of it.

So long as government assures the public services, however, any acts its agents (who are, in M. Duguit's view, its very self) may perform are legitimate. In spite of his protest against giving a special character to the acts of government through a public law, he recognizes that these acts must remain outside the reach of direct legal sanction—which to my mind is almost the entire case for a separate province of public law, as no modern jurisprudence envisages government not responsible under its own organic law. It is noteworthy that for M. Duguit, however, the mere lack of an ultimate legal sanction for acts of government makes no real differentiation between public and private law, for all legal sanctions may be reduced in the end to social reactions; and whenever government violates the norms of social solidarity it provokes a social reaction. Therefore, it is under law.

The logic of the matter is that so long as those who possess force do not so abuse it as to provoke violence, their acts *ipso facto* are within the law. The *solidaritê sociale* stands flatly upon the fact of force and is kept standing by the fact of violence. Slavery itself could be legitimately imposed by the rulers if it assured the public services, and if the force which imposed it were sufficient to defeat the violence of the reaction it might arouse. One does not wonder at M. Esmein's exclamation apropos of Duguit's proposal, "Why not propose a re-

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turn to customary law? That would be clearer!" The only question that arises is whether the return has not gone still further back along the scale of historical evolution to the law of the ant-hill and of the bee-hive.

All along, it has been evident that M. Duguit is bent on exorcising the demon of a morally responsible will. It is not to the state alone that he would deny personality. It is to the individual as well, for let this fell spirit but once get no more than his toe into the door-jamb of M. Duguit's lumber room of fact and strictly non-metaphysical fancy and he would play hobgoblin with the carefully arranged and selected contents. M. Duguit doesn't believe that there really is a moral will, any more than he believes in ghosts. Still he is scrupulously careful not to offend the shade if it should exist, merely contenting himself with the recitation of a positivistic *ave* or two in the form of *ignoramus, ignorabimus*. Even if such a will did exist, he assures himself, it could not conflict with a fact and the social norms are, by definition, facts.

> This norm is a rule which leaves all the wills what they are, a rule whose violation brings about a social reaction and nothing else, a rule which must not be violated, because if it is, the life of society [*la vie sociale*] of which the individuals are at the same time the agents and the beneficiaries, is troubled and then the social organism reacts against the author of the violation. This rule however is not of biological law because the individuals to whom it applies are conscious of their acts and of the motives which determine them.

Very well! But what can be the function of consciousness in a world where the social organism subordinates the individual ruthlessly to its own ends? Certainly no different part from that which it plays in the complex nervous systems of other organisms; and the laws of society, for all the difference it makes in the total result, might be biological. Obviously this will not do. Whatever the nature of the conscious will, it does produce in human society not the laws of an ant-hill, nor yet those which govern, for example, the digestive processes of an organism. The effort at simplification of consciously directed social experimentation into mechanical or into biological

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adaptation simply results in leaving out the significant factor, that is, consciousness itself. M. Duguit recognizes this even though he will not concede any creative power to the consciousness he admits into the pale of scientific respectability.

Indeed I suspect M. Duguit of adopting on the whole a position not unlike the very one he has set up and then knocked down so often to his great content. In spite of his somewhat robustious parade of sticking to the tangible facts—force and the rest of them—he is always haunted by the ghost of a force behind the actual force which rulers control. Perhaps it is this ghost that tortures him on to reslay the slain once more with more than one side-long kick at the mutilated fallacies contained in Rousseau's exposition of the *volonté gênêrale*. But these have long been corpses without laying the stubborn ghost which once gave them life, and whose spirit still walks: that spirit is a will common to all πολιτικὰ ζῷα to cooperate for a good recognized as common within the limits of of an actual community. That will, which M. Duguit adumbrates by the remarkably fertile shades of obligation falling from his "*solidarité sociale*", remains, I venture to say, the necessary presupposition of any form of political association, and its abiding character finds its expression in the relative permanency of principles of law, and the existence of determinate bodies to give them application.

The same curious result may attend a careful examination of M. Duguit's fierce onslaught on the concept of rights in law, i. e., he may turn out in the end to be attempting to safeguard just what modern English jurisprudence would regard as rights, by denying all rights in favor of a law absolutely objective, that is built up on the sole conception of social obligation. To understand his attempt we must remember the abstract nature of the absolute individual rights which the *Dêclaration des droits de l'homme* had made the basis of French law. Let us admit at once a very old and often-repeated truth: a right against society is a contradiction in terms. The only meaning which rights can have is that well stated by the late T. H. Greene: "A right is a power claimed and recognized as contributory to the common good", "a right, not against society, but a right

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to be treated as a member of society".[1] Right in this sense, is the complement, not the converse, of duty. If groups and governments and individuals comprising them have duties, those duties derive their meaning from reciprocal relationships with each other, not with some abstract social solidarity. And out of these relationships spring reciprocal rights to claim the performance of reciprocal duties. Either right or duty, taken as a separate concept and divorced from its actual social context, is an abstraction of the most vicious unreality, and one that will ultimately reduce any system founded upon it to absurdity.

The obstinate fashion in which men hold to the notion of certain individual rights which every citizen may claim to have assured him by good government, life, liberty, and secure possession of lawful property, does not mean that these rights are felt to be innate in every human being as such and that from the very beginnings of society. The slow growth of these conceptions shows that they are the hard-won fruits of the whole development of social justice and of its incorporation into law. It may be said that before they were written into the fabric of legal security, men had no guarantee that they might lead what Greene has recalled for us from Plato and from Aristotle as the end of all action, "the good life." The rights which are assured to men by law are the negative condition of realizing this moral good, conceived by the individual as the same for others as for himself; and in this sense they form the only basis of connection between law and morality. That is to say, law cannot force a man to be morally good in the true sense of moral goodness, because that good can only be attained *sponte sua;* on the other hand law can remove some of the hindrances to free choice, those repressive influences which make the exercise of his rights to become a morally responsible member of society virtually impossible. It is under such a conception of the province of law that legislators have banned or regulated the use of narcotic drugs and of alcohol in so far as these matters may be controlled by control of their sale and manufacture.

[1] His chapter on "The Grounds of Political Obligation" in the *Principles of Political Obligation* is a magistral treatment of the central problem of political morality.

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The idealistic conception of the state finds in consequence that a government derives its power—the force which makes its own use of coercive force possible—from a will which sanctions and maintains that force. It sees in the political power so created an instrument whose use is to assure the rule of law. For it is only through the rule of law that any rights take their origin or keep their existence. It is, I think, clear that governments do in this sense have the right to command, for the use which government serves demands it; it is just as clear that a government which is responsible to the will behind this rule of law will act under law. It is with this meaning that Jellinek and Ihering have spoken of the limitation of public powers as auto-limitation on the part of the state, i. e., on the part of the politically organized community.

The limitation imposed on the acts of government is other in kind, according to M. Duguit. It is a limitation proceeding from an external social necessity, which registers itself more or less automatically in laws which are in turn mere norms for the integrating forces of social solidarity. The rulers do not tyrannize for the same reason that the ruled obey; because they fear to provoke a social reaction.

But if I have been able to suggest in the necessarily brief scope of these observations a truth that needs little more than suggesting to command acceptance, I believe we may agree that any such simplification of the nature of law is a mutilation of fact. Men consciously adopt their laws to their needs, and envisage these needs as ends.[1] Their success is never more than partial, and their procedure is always experimental. An endless history of experimentation has gone into the state as we know it, in its capacity of law-declarer and law-enforcer. The wisdom which we have derived from this social heritage is that the rule of law is not assured by leaving its declaration to the parties to conflict, to groups or to classes, but to the umpire created and sustained by the expressed will of a given community that such an umpire exist.

[1] *Cf.* Ihering's clear statement in *Der Zweck im Rechte,* translated as *Law as a Means to an End* in vol. IX, Modern Legal Philosophy Series.

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I do not pretend that M. Duguit in his system of *droit objectif* makes no provision for such an umpire. On the contrary, for all his earlier leaning toward a pluralism of lawmakers to carry out logically his conception of social reactions reflecting themselves in group-made law, he seems in the last edition of the *Traité* to feel that law as "*une disposition impérative*", as a so-called constructive norm, is in the end simply the creation of the greatest force, which rests at present in the hands of the rulers of the groups corresponding to the great states of the world. State absolutism is another of these facts, as we might have suspected that it would be when once he started down the trail of the fear-theory so clearly blazed by Hobbes.

My contention is simply that any attempt to derive the ultimate sanctions of law from fear and force, leaving out the very real part that the human will plays in making the political power it is "willing" to obey, is bound to father a hopeless brood of errors and contradictions, and to misconceive the very facts it takes too much for granted.

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THE NEW YORK PROPOSAL FOR MUNICIPAL HOME RULE

I

IN accordance with the procedure required for amending the state constitution, the New York legislature of 1921–22 has referred to the legislature of 1923–24 a proposed amendment conferring home-rule powers upon the cities of the State. If adopted by the legislature in 1923 or 1924, this amendment will be submitted to the voters for approval or rejection in the succeeding November.

There are fifty-nine cities in the state of New York. Eighty per cent of the people of the state live in these cities. Fifty-four per cent of them live in the single city of New York. There are few states in the Union in which the statutory sources of city governments are more chaotic and disorderly than they are in New York. Especially is this true of the laws applicable to the city of New York.[1] It is proper, therefore, that the possible consequences of this proposed gift of home rule should be closely examined. No one is competent to forecast these consequences in full; but since constitutional home rule has had a considerable history in a number of other states some of the probable results of the New York proposal are fairly predictable.

It ought to be said on the threshold of this discussion that the criticism that is here voiced is wholly destructive in character. Home rule is an alluring political catchword. But the drafting of an adequate constitutional provision conferring home rule is an extraordinarily difficult job. In view of its complications, a perfect provision, a litigation-proof provision, is manifestly beyond human capacity. It is relatively easy,

[1] The recently published *Digest of Special Statutes Relating to the City of New York* (J. B. Lyon Company, Albany, 1922) indicates the enormous number of unrepealed statutes that affect the government of New York directly or indirectly.

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with a degree of surgical skill, to sever a limb from a body and keep the body alive; it is another matter to sever the limb in part from the body and to keep both the limb and the body alive and happily functioning. On the merits of home rule as an abstract proposition there ought to be little difference of opinion. Differences arise in respect to the kinds and degrees of proposed self-government. It may easily happen that a particular brand of home rule may become in practical operation more a nuisance than a beneficence. There may be a larger measure of peace and comfort in knowing the exact metes of one's prerogatives and powers than in living in a perpetual state of uncertainty. It is open to question whether the cities of New York are better off under their present constitutional status than they will be under the kind of home rule that is proposed by the amendment that has now passed one legislature.

II

If the proposed amendment goes into the constitution the cities of the State will enjoy such self-government as can be extracted from the following pronouncement of the fundamental law: [1]

Sec. 1.[2] It shall be the duty of the legislature to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessments and in contracting debt by such municipal corporations; and the legislature may regulate and fix the wages or salaries, the hours of work or labor, and make provision for the protection, welfare and safety of persons employed by the state or by any county, city, town, village or other civil division of the state, or by any contractor or subcontractor performing work, labor or services for the state, or for any county, city, town, village or other civil division thereof.

Sec. 2.[3] The legislature shall not pass any law relating to the prop-

[1] *Laws of New York, 1922,* vol. II, p. 1872, proposing a rewriting of Article XII.

[2] Section 1 not amended.

[3] Section 2 new.

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erty, affairs or government of cities, which shall be special or local either in its terms or in its effect, but shall act in relation to the property, affairs or government of any city only by general laws which shall in terms and in effect apply alike to all cities except on message from the governor declaring that an emergency exists and the concurrent action of two-thirds of the members of each house of the legislature.

Sec. 3.[1] Every city shall have power to adopt and amend local laws not inconsistent with the constitution and laws of the state, relating to the powers, duties, qualifications, number, mode of selection and removal, terms of office and compensation of all officers and employees of the city, the transaction of its business, the incurring of its obligations, the presentation, ascertainment and discharge of claims against it, the acquisition, care, management and use of its streets and property, the wages or salaries, the hours of work or labor, and the protection, welfare and safety of persons employed by any contractor or subcontractor performing work, labor or services for it, and the government and regulation of the conduct of its inhabitants and the protection of their property, safety and health. The legislature shall, at its next session after this section shall become part of the constitution, provide by general law for carrying into effect the provisions of this section.

Sec. 4.[2] The provisions of this article shall not be deemed to restrict the power of the legislature to enact laws relating to matters other than the property, affairs or government of cities.

Sec. 5.[3] The legislature may by general laws confer on cities such further powers of local legislation and administration as it may, from time to time, deem expedient.

Sec. 6.[4] All elections of city officers, including supervisors and judicial officers of inferior local courts, elected in any city or part of a city, and of county officers elected in the counties of New York and Kings, and in all counties whose boundaries are the same as those of a city, except to fill vacancies, shall be held on the Tuesday succeeding the first Monday in November in an odd-numbered year, and the term of every such officer shall expire at the end of an odd-numbered year. The terms of office of all such officers elected before the first day of January, one thousand eight hundred and ninety-five, whose successors have not then been elected, which under existing laws would expire

[1] Section 3 new.

[2] Former section 2 materially amended.

[3] Section 5 new.

[4] Former section 3.

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with an even-numbered year, or in an odd-numbered year and before the end thereof, are extended to and including the last day of December next following the time when such terms would otherwise expire; the terms of office of all such officers, which under existing laws would expire in an even-numbered year, and before the end thereof, are abridged so as to expire at the end of the preceding year. This section shall not apply[1] to elections of any judicial officer, except judges and justices of inferior local courts.

Sec. 7.[2] The provisions of this article shall not affect any existing provision of law; but all existing charters and other laws shall continue in force until repealed, amended, modified or superseded in accordance with the provisions of this article. Nothing in this article contained shall apply to or affect the maintenance, support, or administration of the public school systems in the several cities of the state, as required or provided by article nine of the constitution.

III

On the face of it this proposal is pregnant with uncertainty. "It shall be the duty of the legislature to provide for the organization of cities." This moral injunction has been in the constitution since 1846. For obvious reasons there has been no occasion for any judicial determination of the meaning of the phrase "provide for the organization of cities". But in practice the legislature has fulfilled this "duty" by enacting innumerable special and some general laws that have "provided for the organization of cities" in the most minute and meticulous detail. Manifestly, however, the legislature will be unable to continue this practice. The scope of this legislative duty must now be read in the light of a new context.

The second section of the article prohibits the legislature (except upon an emergency message and by a two-thirds vote) from passing "any law relating to property, affairs or government of cities, which shall be special or local either in its terms or in its effect" and requires the legislature to deal with such matters by "laws which shall in terms and in effect apply alike to all cities". When dealing, therefore, with the "property,

[1] Words "to any city of the third class, or" omitted.

[2] Section 7 new.

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affairs or government of cities" the legislature must "provide for their organization" by laws that are applicable alike to New York, with its nearly six million inhabitants, and to the "rural" city of Sherrill, with a population of less than two thousand souls. Indeed the question may well be asked whether the "duty" that is imposed upon the legislature by the first section can possibly be fulfilled in view of the stringent limitation that is imposed by the second section. The phrase "property, affairs or government" may not have a precise connotation.[1] But it certainly comprehends a good deal that is commonly dealt with in providing for the "organization" of a city. The phrase "in terms and in effect" as used in this connection is new to American constitutional law. How the courts may construe it is open to question, but it appears to be fairly tight against legislative dodge or subterfuge.

This raises two questions of importance: (1) Will laws that may be adopted at the option of any city be regarded as laws of general application? (2) Is it possible for the legislature to provide for the organization of cities by mandatory laws of general application?

The question whether an optional city law is general or special in character appears never to have been raised in New York.[2] In a number of other states optional city laws have been held to be general, not special, laws;[3] but in none of these instances did the constitution require that the general law should apply alike to all cities "in terms and in effect". Would a law adopted by Yonkers and rejected by New Rochelle apply "in effect" alike to these two cities? Here at least is room for honest doubt. It may be that the legislature will not

[1] See below, p. 669 ff.

[2] The constitutionality of the optional city government law of 1914 (*Laws of New York, 1914*, ch. 444) applicable to any city of the second or third class was under review in *Cleveland v. City of Watertown*, 222 N. Y. 159 (1917). But the court did not consider whether the law was general or special. The only point decided was that the law, and especially the feature of the referendum, did not involve an unconstitutional delegation of legislative power.

Eckerson v. City of Des Moines, 137 Ia. 452 (1908); *Adams v. Beloit*, 105 Wis. 363 (1900); *People v. Kipley*, 171 Ill. 44 (1898); *Walker v. Spokane*, 62 Wash. 312 (1911).

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attempt to "provide for the organization of cities" through the medium of optional laws; but the enactment of optional city laws has been a favorite practice in some states in which the enactment of special city laws has been prohibited. The question, therefore, of the constitutionality of such laws under the proposed amendment is of more than theoretical importance.

Concerning the possibility of providing for the organization of cities by mandatory laws of general application it may be argued that from a practical point of view this is impossible. It may be urged that a garment of government cannot be fashioned that will be uniformly serviceable to a giant and a pigmy. Ohio is the only state in the Union that has ever tried to do this on a thoroughgoing scale. In 1902 [1] a uniform and mandatory charter code was applied to all the cities of that state, ranging in population from five thousand to nearly four hundred thousand inhabitants. The system was not unworkable although it was also far from satisfactory.[2] And needless to say this code extended a considerable measure of self-government in that it was impossible to regulate salaries, numbers of subordinate officers, and numerous other details in such a law. Many matters of this kind (often regulated in special charters) were of necessity turned over to local control.

In the light of this Ohio experience, then, it cannot be said that it is humanly impossible for the legislature to "provide for the organization" of New York and of Sherrill by a charter code applicable alike to both cities. But it is also not likely that the legislature will attempt to enact such a law. Imagine, for example, a division of Sherrill into five administrative boroughs or an application to the New York police force of provisions appropriate to the traffic officer at the four corners in Sherrill.

Among the Consolidated Laws of New York there are chapters entitled General City Law and General Municipal Law. Relatively speaking, these chapters are now of almost negligible

[1] Following the decision of *State ex rel. Knisely v. Jones*, 66 Oh. St. 453 (1902), which declared all classification of cities void.

[2] Home rule was introduced in Ohio in 1912 by constitutional amendment.

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importance to the cities of the state. They would be of even less importance if the legislature had been powerless to enact the many sections of these laws that now apply to classes of cities.[1] It is nevertheless possible, not to say probable, that if this proposed amendment is adopted the legislature will expand these chapters by enacting some additional laws that will "in terms and in effect apply alike to all cities". It seems fairly certain, however, that the number and range of such laws will be limited. Because of inherent difficulties the legislature will probably not attempt in any comprehensive way to "provide for the organization of cities" by mandatory laws of general application.

And this, no doubt, is the very result that is deliberately aimed at by the proposed amendment, despite the confusion and apparent contradiction that arises from the retention in the new provision of a clause of the old provision that imposes upon the legislature the duty of providing for the organization of cities. For the third section of the article confers upon every city "the power to adopt and amend local laws" relating to a series of enumerated subjects all of which pertain directly or indirectly to what has in legislative practice heretofore been regarded as "the organization of cities". With respect to this grant of power the legislature is competent only to provide "by general law for carrying it into effect."[2] In other words it is the apparent intention of the proposal (if one is justified in deriving deliberate intention from deliberate contradiction) that the legislature shall perform its first-mentioned duty of providing for the organization of cities by performing its last-mentioned duty of enabling cities to provide for their own organization.

IV

This home-rule proposal, like every other constitutional provision for home rule, makes in effect a division of powers between the state legislature on the one hand and the cities of

[1] See below, p. 666.

[2] See below, p. 679.

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the state on the other. Far-reaching legal and practical difficulties are certain to arise out of the uncertainty of such division as is made by this proposal. The division is as follows: First, the legislature may enact any law relating to the property, affairs or government of cities, provided such law "applies in terms and in effect alike to all cities"; second, it may enact a special law relating to such matters upon an emergency message and by an extraordinary majority vote; and third, it may enact any law, whether general or special, "relating to matters other than the property, affairs or government of cities."[1] Thus is the sphere of legislative competence prescribed.

How, then, is the sphere of municipal competence defined? In view of the stringent limitations that are imposed upon the legislature in enacting laws relating to the "property, affairs or government of cities" (limitations that make it practically impossible for the legislature to regulate such matters adequately) one would naturally expect to find that the home-rule grant would extend to cities (subject to such statutes as the legislature might enact under the limitations imposed) power to enact laws relating to their own property, affairs or government. But strange to relate, when it comes to the home-rule grant[2] this phrase is wholly abandoned. Instead of a general grant (accompanied by specific declarations in respect to powers about which there might be doubt as to their inclusion in such grant) the home-rule clause takes the form of an enumeration of more or less specific powers.[3] While this enumeration eschews the use of the general phrase "property, affairs of government," and while it appears to settle some questions as to specific powers that might otherwise be uncertain, it nevertheless uses

[1] Sec. 4.

[2] Sec. 3.

[3] The question arises whether this curious arrangement may not result perchance in putting certain subjects of control almost completely in limbo. May there not be certain matters relating to the property, affairs or government of cities which are not included in the enumeration of powers granted to cities? If so, the cities will not be able to regulate such matters, and the legislature can do so only with great difficulty. Perhaps, however, this situation is saved by section 5 under which the legislature may confer upon cities "further powers of local legislation and administration".

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words and phrases that are quite as vague and uncertain as any general grant of powers could be. The city, for example, is empowered to adopt and amend local laws relating to the "powers" of all its officers and employees. Now it is manifest that if the city may control the scope of the powers of its own officers it may also control the scope of its own powers.[1] The two are inseparable. The city cannot distribute powers to its officers unless it has powers to distribute. The sum of the powers of its officers is the sum of the powers of the city. Indeed, while it is quite possible to enumerate the entire powers of the city at one point in its charter and thereafter to distribute these same powers to the agencies that are set up by the charter, this is by no means a common practice in charter-making. Most of the powers of most cities are conferred not upon the city as such but upon specific officers and agencies. It seems clear, therefore, that under this grant of power to regulate the power of its officers the city is given a wholly indefinite scope of powers.

The city will also be empowered to control "the transaction of its business" and "the government and regulation of the conduct of its inhabitants". Such phrases may mean almost anything—or nothing. In the law of municipal corporations they have no adjudicated signification whatever. Indeed it is open to reasonable doubt whether the phrase "laws . . . relating to . . . the government . . . of its inhabitants" has any meaning, legal or otherwise, unless government of its inhabitants means simply government of the city. But the point of importance is that these phrases are quite as vague as, though possibly not identical with, the phrase "property, affairs or government."

[1] Unless, indeed, the home-rule grant were construed to vest cities with power to enact local laws relating to the powers already conferred upon its officers by existing charters and laws. In this view the city would be empowered only to redistribute existing powers of officers. Such a rule of construction does not appear to be reasonable. It would be especially unreasonable in the case of the small city with limited powers. As such a city advanced in population it would be unable to expand the competence of its officers commensurately with the official powers previously conferred on other cities.

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V

In nearly all of the states with constitutional home rule the legal controversies that have arisen may be divided into two general classes. In the one class questions have been raised whether in the absence of any conflict with state law the city could exercise this or that specific power under the general and indefinite home-rule grant, however phrased. The other class of cases has involved conflicts between state laws and charter provisions (here called "local laws") dealing with the same subjects. In case of such conflict the question is: Which takes precedence and prevails, the state law or the charter provision? In view of the fact that home-rule cities have not often wandered far into the field of vagarious experimentation, but more especially in view of the wide range and almost endless ramifications of state laws (other than municipal charters proper) the cases involving conflicts have been far more numerous and far more important than the cases involving merely questions of power in the absence of conflict. It is, therefore, in the light of possible conflicts between state laws and charter provisions (local laws) that a home-rule provision should be chiefly scrutinized.

The local laws which cities will be empowered to enact in respect to the definite and indefinite subjects contained in the enumerated list must be "not inconsistent with the . . . laws of the state." What laws? In this question lies the whole unfathomed problem of conflict which must be gradually resolved by the courts through interminable years.

What laws indeed? With respect to some laws the answer is no doubt fairly certain. With respect to other laws one person's guess is as good as another's.

In the first place, then, the laws of the state with which "local laws" adopted by any city must be consistent will unquestionably include the general laws relating to the "property, affairs and government of any city" which "in terms and in effect apply alike to all cities", as well as the special laws relative to such matters which may be enacted in accordance with the extraordinary procedure prescribed. In enacting local laws cities will be circumscribed by such provisions of the existing

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General City Law as are universal in application to the cities of the state. Moreover a local law adopted by any city will be superseded by a later law of the legislature if this later law is of general application to cities, or if, being special, it is enacted in the required manner. To the extent that the legislature can proceed by these avenues of approach the home-rule grant may be rendered wholly nugatory. So much is indisputable.

In the second place the laws of the state with which "local laws" must be consistent are not the whole body of state laws (for the most part special) that now go to make up the charters of the several cities of the state. If the cities cannot adopt "local laws" inconsistent with many of the provisions of their present charter laws the proposed grant of home rule would be foolish because futile. But this is not to say that these "local laws" will not have to be consistent with *some* of the provisions of existing charter laws. If perchance there are provisions in these charter laws—as there unquestionably are—that relate to matters other than the "property, affairs or government of cities", presumably the city will be estopped from enacting a "local law" upon such a matter. For example, take the matter of condemnation proceedings. The proposed amendment will empower the city to "adopt and amend local laws . . . relating to . . . the acquisition . . . of its streets and property." The sections of the present New York City charter which deal with this subject are honeycombed with provisions that make the Supreme Court an important agency in condemnation proceedings.[1] But the jurisdiction of the Supreme Court, considered in itself as a subject of legislation, is without doubt a matter "other than the property, affairs or government of cities." Will the city be competent to alter this jurisdiction even in respect to a matter over which it is given express competence—to wit, the acquisition of its streets and property? Incidentally it may be remarked that at numerous other points in the New York charter the courts are given special jurisdictional competence.

[1] Ashe, *The Greater New York Charter* (4th ed., 1917), secs. 959, 962, 970, 970a, 974, 975, 976, 977, 980, 981, 982, etc.

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Again let us suppose that the subject of attempted local legislation relates to "the powers . . . of . . . officers . . . of the city" and also to a matter "other than the property, affairs or government" of the city. In other words, suppose that by a charter provision a municipal officer is given power in respect to some matter of state as distinguished from local concern. Here again would result a clear instance of conflict. Over the one matter the city is expressly empowered; over the other the legislature's competence is expressly preserved. To take only a single example: by the terms of the New York City charter certain powers are conferred upon the city board of health in respect to the report and record of marriage licenses.[1] These provisions relate to the powers of officers of the city, but they certainly also relate to matters "other than the property, affairs or government" of the city. It seems clear, therefore, that in adopting local laws cities will be compelled to make these local laws conform to *some* of the provisions of their existing charters.

In the third place similar questions of conflict will arise in respect to a great many provisions of law that are not found in municipal charters. In the Consolidated Laws, wholly apart from the chapters entitled "General City Law" and "General Municipal Law", there are innumerable provisions in many chapters that dovetail into the provisions of city charters. This is especially true of such chapters as the Civil Service Law, Education Law, Judiciary Law, Labor Law, Penal Law, Public Health Law, Public Officers Law, Transportation Corporations Law, and State Charities Law. Moreover these Consolidated Laws bristle with provisions that apply exceptionally to cities that are designated by name or by some special classification on the basis of population. Titularly and contextually these laws are without doubt general in character. That is to say, they deal more or less comprehensively for the entire state with this or that general subject of legislation, however special or local may be the application of some of their provisions. But that is not to say that none of their provisions relate to matters in respect to which cities will be empowered under this

[1] Ashe, *op. cit.*, secs. 1239, 1240.

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proposed amendment to "adopt and amend local laws". Nor is it to say that all of their provisions relate to "matters other than the property, affairs or government of cities."

Probably the presumption will be in favor of regarding the Consolidated Laws as laws relating to matters other than the property, affairs or government of cities. With respect to many of these laws there can be practically no dispute on this point. A provision of the Insurance Law that applies exceptionally in New York City[1] is obviously a law that does not relate to the property, affairs or government of New York; the control of the insurance business has never been regarded, either in theory or practice, as having any relation to the affairs or government of cities. But this is due to the subject matter of the law and not at all to the fact that the provision in question is found in the Consolidated Laws. On the other hand, such a special provision in the Election Law[2] is in quite a different category. A provision of this kind certainly does relate to the affairs and government of the city; moreover, under the proposed amendment cities are specifically empowered to "adopt and amend local laws . . . relating to the . . . mode of selection . . . of all officers . . . of the city."

If it is to be held generally that, regardless of subject matter or of special municipal application, the mere inclusion of any matter in a chapter of the Consolidated Laws is sufficient not only to remove it from the control of "local laws" that may be adopted by cities but also to reserve it for unrestricted legislative control, it is manifest that the power of the legislature to invade the sphere of municipal home rule is wholly without limitation. Under such a rule of construction, if the legislature desires to override a "local law," it will be necessary only to find a berth for its provision in some existing or newly created chapter of the Consolidated Laws. Conspicuous among the chapters already available would be the General City Law and the General Municipal Law. Indeed if the consequences are fully appreciated—as they may or may not be in a specific case

[1] Insurance Law, Ch. XXVIII of the *Consolidated Laws*, sec. 133.

[2] Election Law, Ch. XXII of the *Consolidated Laws*, secs. 190, 209a.

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at bar—it will be disastrous to the cause of home rule if the court should apply to the solution of this difficult problem of conflict the rule-of-thumb test of inclusion in or exclusion from the Consolidated Laws.

This curiously drafted proposal appears to be more complicated than the home-rule provisions in most other states. When carefully analyzed, however, it appears that its fundamental difficulty is practically identical with the difficulty that has developed in most of the other states. When a case of conflict arises between a locally-adopted "local law" and the "laws of the State" with which such "local laws" must be consistent, the question will be: What is the nature of the subject matter of these conflicting laws? Is it a subject in respect to which cities have been empowered to adopt local laws? Or is it a subject relating to a matter other than the "property, affairs or government of cities"? In many instances the only reasonable answer will be that it is both. But the courts are estopped from being reasonable. The two laws cannot stand together. They relate to the same subject matter but they are different. One must fall before the other. Ridiculous as it may be, the courts are therefore compelled to declare that the subject is inherently one thing or the other. Nor is the question that is involved a question of law or of fact. It is largely a question of dubious opinion put under the mandatory masquerade of a question of constitutional law. Whether a city should or should not exercise self-governing powers in numerous matters is a question of policy—a question of politics, if you choose. It is not a question of law. To require judges to answer it as if it were a question of law is to impose upon them an onerous duty that does not properly belong to them. It is indeed to invite self-stultification.

VI

Three important phrases that occur in this home-rule proposal have been in the New York constitution in identical or very similar words for a long time. These phrases are: (1) "the property, affairs or government of cities"; (2) "officers . . . of the city"; and (3) "local laws". The cases in which

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these phrases have been construed by the New York courts throw a modicum of light upon how the courts will probably decide some of the questions of conflict that are certain to arise under this proposal.

The phrase, "property, affairs or government of cities" has been in the constitution since 1894.[1] A law relating to the "property, affairs or government of cities" is declared to be a "city law" which, if special, must be subjected to the suspensory veto of the local municipal authorities. In practice the legislature has been generous in its interpretation of what is a "city law". It has submitted to the local authorities most "special" laws about which there could be any question as to their being city or non-city laws.[2] In one or two cases, however, the Court of Appeals has been called upon to give specific interpretation to the phrase "property, affairs or government". Thus in a case decided in 1896[3] a liquor tax was upheld which, for purposes of excise taxes, created a classification of cities different from that provided by the constitution. This law was not submitted to the approval of the cities thus "specially" affected by its provisions. It was the view of the court that the law "is neither a general nor a special city law, nor does it relate to the 'property, affairs or government' of cities." It was on the contrary "a general state excise law, with such special provisions and adaptations as to the legislature seemed proper." The specific point involved in this case is now anachronistic; no controversy in respect to liquor licenses is likely to arise under the proposed home-rule amendment,[4] unless pre-

[1] Art. XII, which this home rule proposal will supersede.

[2] Since the enactment of the Consolidated Laws in 1909 apparently none of the "special" provisions of these laws has been singled out for judicial controversy on this point. The reason, no doubt, has been that such "special" provisions were usually part and parcel of what was otherwise obviously a general law. Occasionally, however, amendments to the Consolidated Laws which were of special municipal application have been treated by the legislature as if they were "special city laws". For example, *Laws of New York, 1916*, ch. 524, amending the Domestic Relations Law in respect to the solemnization of marriages in New York City was submitted to and accepted by the mayor.

[3] *People ex rel. Einsfeld v. Murray*, 149 N. Y. 367 (1896).

[4] In the opinion, nevertheless, there is much food for thought in connection

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chance "light wines and beers" are legalized under the Eighteenth Amendment and the license system of controlling their sale is restored.

Of far more importance are the cases involving laws establishing control over local public utilities. The Rapid Transit Act, enacted in 1891 [1], applied only to cities having a population of over one million. In 1912 this act, which had many times been amended, was sustained against the express contention, among other contentions, that it was a "special city law" relating to the "property, affairs or government of cities" and as such should have been submitted to the approval of the mayor of New York.[2] "In the first place", said the court, "the Rapid Transit Act was passed before this constitutional provision went into effect.[3] In the second place, the Act is not one of those contemplated by the provision in question. The latter contemplates laws which relate to municipal property and

with the home-rule proposal. For example, among other things the court said: "In enacting a general law [which in fact has special municipal applications] under the police power the legislature is not hampered or restrained by the classification of cities in the constitution." In other words, a police power law does not relate to the "property, affairs or government of cities". It is sufficient to remark that innumerable provisions of every city charter may properly be ascribed to an exercise of the police power of the state. Under the proposed amendment will there be no limit to the scope of legislative power over such charter provisions? Again the court said: "The granting of licenses for the liquor traffic has never been a corporate function or duty of a city, as such." In point of fact, except during the brief life of the Metropolitan Board of Excise (1866-1870) the granting of such licenses has been a function of the city of New York from the Dongan charter to the Volstead Act. The Dongan charter (sec. 10) declared: "The said mayor of the said city . . . shall have power and authority to give and grant licenses annually, under the public seal of the said city to all . . . public sellers of wine, strong waters, cider, beer, or any other sort of liquors." — Ashe, *The Greater New York Charter* (4th ed., 1917), p. 1558. This expression of opinion illustrates how historical facts may sometimes be ignored by the courts. Indeed this case, wholly apart from its specific subject matter, presents an admirable illustration of the kind of question that is likely to arise in far more acute form under the proposed home rule amendment.

[1] *Laws of New York, 1891,* ch. 4.

[2] *Admiral Realty Co. v. City of New York,* 206 N. Y. 110 (1912).

[3] The court did not advert to the fact that the Act had been many times amended since the constitutional provision went into effect and that none of these amendments had been submitted to the mayor of New York.

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affairs and may be described, as the provision does describe them, as 'city' laws. To come within the precise provision which is invoked here it would be necessary to hold that the Rapid Transit Act was a 'special city law'. It seems to me that this term could not be regarded as a reasonable description of the statute before us. It was adopted not only for the benefit of the cities which, of course, would be affected, but of the public at large, and it confers broad powers, including that of the granting of franchises. It is a much more general law than is contemplated by the provision in question."

In 1907 the law which created the two public service commissions, one for New York City and the other for the rest of the state, was submitted to the mayor of New York and was passed by the legislature over the mayor's veto.[1] The submission of this law for the approval of the mayor indicated that the legislature regarded its subject matter as one relating to the property, affairs or government of the city. But neither the law of 1919, which abolished the public service commission of the first district and substituted a transit construction commissioner,[2] nor the law of 1921, which abolished the office of transit construction commissioner and substituted three transit commissioners, was submitted to the city.[3] The latter law was contested upon this among other grounds.[4] In sustaining the law against this contention the court simply quoted with approval the above-mentioned opinion which had been handed down in 1912.[5]

[1] *Laws of New York, 1907,* ch. 429.

[2] *Laws of New York, 1919,* ch. 520.

[3] *Laws of New York, 1921,* ch. 134.

[4] *Matter of McAneny v. Board of Estimate and Apportionment,* 232 N. Y., 377 (1922).

[5] On the point that the law was a "local law" and therefore in violation of Art. 3, sec. 18 of the constitution, the court reviewed the legislation pertaining to rapid transit, and concluded: "All of the legislation bearing on the subject has for many years recognized that a duty rested upon the legislature to provide for rapid transit, such a duty to be performed by itself or by an agent designated for the purpose, a function which the state in its sovereign capacity had a right to exercise irrespective of the city authorities, since it concerned the whole state just as much as the maintenance of highways or the management of other public utilities."

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Under the adjudicated cases, therefore, one point appears to be settled, namely, that the regulation of local public utilities is a matter "other than the property, affairs or government of cities." Under the proposed home-rule grant cities will have no power in respect to this matter, which, at least so far as New York City is concerned, is the burning home-rule question of the hour. Whatever may be thought of the reasonableness of this interpretation of the phrase in question, it at least settles in advance a controversial point that has given considerable difficulty in other home-rule states. The decisions of the New York courts, however, furnish no further light on the meaning of the phrase, "property, affairs or government."

By this home-rule proposal cities, as we have seen, will be empowered to "adopt and amend local laws" relating to many matters concerning "all officers . . . of the city." Who are "officers" of the city? The phrase "city officers" has been in the constitution of New York since 1846 in a clause which declares among other things that all "city officers" shall be locally elected or locally appointed.[1] The complicated section of the constitution (sometimes called the "home-rule clause") in which this right is guaranteed to cities has received a good deal of judicial construction. In construing the term "city officers" it would have been quite possible for the courts to introduce the distinction between those officers who perform functions of local or city concern and those who, though commonly subject to local selection, may nevertheless be regarded as state officers because of the nature of their functions. In fact, however, this distinction has found little or no place in the recorded decisions interpreting this section. By applying other provisions of the section the courts did indeed permit the legislature to narrow the grant of the right of local selection of city officers.[2] But they gave no restricted meaning to the

[1] Constitution of New York, 1846, Art. X, sec. 2; Constitution of 1894, Art. X, sec. 2.

[2] For a discussion of the ways in which the legislature was permitted to invade this right see McBain, *The Law and the Practice of Municipal Home Rule*, pp. 35-42, and the cases there discussed.

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term "city officers". By expression or by implication that term has been broadly construed to include such officers as police,[1] health,[2] excise,[3] tax[4] and election[5] officers. From the functional viewpoint any one of these officers might, not without some reason, have been held to be a state, not a city, officer. If this amendment is adopted, it will remain to be seen whether the New York courts will interpret the term "officers . . . of the city" with the same degree of liberality that they have applied to the term "city officers" as used in the section which conferred upon cities merely the right of local election or appointment. In its new connection the term has far larger implications, especially in view of the fact that the city will be empowered to control such large matters as the "powers" and "duties" of its officers.

The phrase "private or local bill" was likewise introduced into the constitution of 1846 and is used in the constitution of 1894 in the section that prohibits more than one subject in such a bill and in that which prohibits any "private or local bill" in respect to an enumerated list of legislative subjects.[6] In the course of time these sections have been construed in a large number of cases. It is highly improbable, however, that these cases will throw much if any light upon the term "local laws" as used in this home-rule provision. It seems fairly certain that they will not materially determine the content of the home-rule grant; for after all, the scope of that grant lies not in the term "local laws" but in the enumerated subjects in respect to which local laws may be adopted.

[1] *People ex rel. Wood v. Draper*, 15 N. Y. 532 (1857); *People ex rel. McMullen v. Shepard*, 36 N. Y. 286 (1867); *People ex rel. Bolton v. Albertson*, 55 N. Y. 50 (1873).

[2] *Metropolitan Board of Health v. Heister*, 37 N. Y. 661 (1868); but see *In the Matter of Whiting*, 2 Barb. (N. Y.) 513 (1848), in which a lower court held that the health officer of the port of New York was not a city officer.

[3] *Metropolitan Board of Excise v. Barrie*, 34 N. Y. 657 (1866), where, however, the constitutional guarantee of local selection of local officers was apparently not invoked. But see *People ex rel. Haughton*, 104 N. Y. 570 (1887), where the statutory phrase "all appointments to office in the city of New York" was construed to include commissioners of excise.

[4] *People v. Raymond*, 37 N. Y. 428 (1868).

[5] *Matter of Morgan v. Furey*, 186 N. Y. 202 (1906).

[6] Constitution of 1894, Art. III, secs. 16 and 18.

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VII

It is somewhat difficult to consider, in the light of the peculiar phrasing of the New York proposal, the principal subjects of controversy that have arisen in the home-rule states. Nevertheless the attempt to do this briefly is probably worth the effort.

One or two matters that have given difficulty in the home-rule states are definitely disposed of by this proposal. Thus the whole subject of education is specifically excepted from the grant of home rule; it is apparently left under the exclusive jurisdiction of the legislature.[1] Again the matter of the "presentation, ascertainment, and discharge of claims" against the city—a matter that has given rise to considerable litigation in the home-rule states—is disposed of by express inclusion within the home-rule grant.[2]

As we have seen, moreover, one important subject—the right to regulate and control privately owned local utilities—has doubtless been settled by the judicial determination that a law dealing with such a matter does not relate to the "property, affairs or government of cities."[3] Even in the absence of such adjudication in advance, it is open to question whether any of the phrases of the proposed home-rule grant could be construed to confer such power upon cities, unless it could be regarded as implied in the power to control such uncertainties as the "transaction of its business" or the "government . . . of its inhabitants."

The constitutions of four of the home-rule states expressly confer upon cities the power to own and operate public utilities. Except in California,[4] however, these constitutional grants are accompanied by such stringent limitations in the matter of finance as to make them in most instances practically unavailable.[5]

[1] Sec. 7.

[2] Sec. 3.

[3] See above, p. 670 ff.

[4] Constitution of California, Art. XI, sec. 19, as amended in 1911.

[5] Constitution of Colorado, Art. XX, sec. 1, and of Oklahoma, Art. X, sec. 27, in both of which states a vote of the taxpaying voters is necessary. Constitu-

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In California, even before the adoption in 1911 of a constitutional amendment conferring this power, it had been held that the general grant to the city of power to "frame and adopt a charter for its own government" included the power to provide in the home-rule charter for the ownership and operation of public utilities.[1] In Washington it was early implied that the city had the power to own and operate utilities only in so far as the legislature had expressly conferred such power in supplement of the home-rule grant.[2] In Texas extensive power to own and operate public utilities was conferred by the enabling act under which the legislature gave effect to the constitutional grant of home-rule.[3] In the other home-rule states controversies over municipal ownership have not arisen, apparently because cities have not attempted to extend their competence into this field. Under the New York proposal it is highly doubtful whether cities will be able effectually to claim any power to own and operate utilities. There is no specific reference to the subject. And even if municipal ownership could be gathered under the power to "adopt and amend local laws . . . relating to the powers . . . of all officers . . . of the city" or to the "government . . . of its inhabitants", the constitutional debt limit[4] would in most cities stand as an insuperable obstacle to any considerable adventure in this direction.

Matters pertaining to municipal elections have been held to be matters of state concern in Missouri[5] and Colorado.[6] But

tion of Michigan, Art. VIII, secs. 23 and 24, and of Ohio, Art. XVII, secs. 4, 5, and 6, in both of which states bonds beyond the debt limit may be secured only upon the property and revenues of the public utility in question.

[1] *Platt v. San Francisco,* 158 Cal. 74 (1910). See also *Matter of Russell,* 163 Cal. 668 (1912).

[2] *Seymour v. Tacoma,* 6 Wash., 138 (1893).

[3] *General Laws of Texas, 1913,* ch. 147.

[4] Art. 8, sec. 10.

[5] *Ewing v. Hoblitzelle,* 85 Mo. 64 (1884); *State ex rel. Faxon v. Owsley,* 122 Mo. 68 (1894); *State ex rel. McCurdy v. Slover,* 126 Mo. 652 (1894). In practice municipal elections in St. Louis and Kansas City are regulated almost wholly by state law.

[6] *Williams v. People,* 38 Col. 497 (1906); *Mauff v. People,* 52 Col. 562 (1912). But power over municipal elections was conferred upon home-rule cities by specific constitutional amendment in 1912; Art. 20, sec. 6.

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the contrary rule has been applied in California,[1] Oklahoma,[2] Oregon[3] and Ohio.[4] In Washington the power of cities to regulate their own elections is derived from the legislature, not from the constitution, and to the extent that controversy has arisen this power over elections has been narrowly construed.[5] The New York proposal will empower cities to enact local laws relating to the "mode of selection . . . of all officers of the city." Whether this includes the power to regulate all or any matters pertaining to the election of city officers is uncertain. Moreover since the time of the election of city officers is specifically fixed by the constitution,[6] and since state Assemblymen, if no other state officers, are always elected at the same time, there would in any event be some difficulty in operating at one and the same election two differing sets of election requirements—one for local officers and the other for state officers.

Matters relating to local taxation have been held in Missouri[7] and Washington[8] to be matters in respect to which home-rule charter provisions must give way before state laws. But in California a home-rule charter may provide for the levy of taxes

[1] *Socialist Party v. Uhl,* 155 Cal. 776 (1909).

[2] *Lackey v. State ex rel. Grant,* 29 Okla. 255 (1911); but because of another provision of the constitution cities could not control matters pertaining to the nomination of candidates for municipal offices; *Mitchell v. Carter,* 31 Okla. 592 (1912).

[3] *State ex rel. Duniway v. City of Portland,* 133 Pac. 62 (1913).

[4] *Fitzgerald v. City of Cleveland,* 88 Oh. St. 338 (1913), which case, however, was not wholly conclusive on this point.

[5] *State ex rel. Fawcett v. Superior Court,* 14 Wash. 604 (1896); *State ex rel. Navin v. Weir,* 26 Wash. 501 (1901). But see *Hiltzinger v. Gillman,* 56 Wash. 228 (1909), sustaining a home rule charter provision for the recall of city officers.

[6] Sec. 6.

[7] *State ex rel. Halpin v. Powers,* 68 Mo. 320 (1878); *State ex rel. Ziegenhein v. St. Louis and San Francisco Railway Co.,* 117 Mo. 1 (1893); *State ex rel. Hunt v. Bell,* 119 Mo. 70 (1893); *City of St. Louis v. Meyer,* 185 Mo. 583 (1904). But see *City of St. Louis v. Sternberg,* 69 Mo. 289 (1879), where it was held that the power to frame a charter included the power to provide for taxation, provided there were no conflict with any state law.

[8] *State ex rel. Seattle v. Carson,* 6 Wash. 250 (1893).

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that are expressly prohibited by state law.[1] The New York proposal confers upon cities no power over matters pertaining to taxation unless such power can be derived from the grant of competence over the "powers . . . of all officers . . . of the city" or over the "transaction of its business", or over the "government . . . of its inhabitants."[2] Certain it is that in most municipal charters the taxing power is inextricably interwoven with the "powers" of certain municipal officers. Again, therefore, the scope, if any, of the city's authority under this grant is wholly a matter of guess.

In contrast with the above-noted rule in New York, police officers have, under various constitutional provisions, been held in a number of states to be functionally state rather than city officers.[3] And specifically in home-rule states, control over police departments has been declared to be a matter of state concern in Missouri,[4] but a "municipal affair" in California[5] and Minnesota.[6] The home-rule provision of the Colorado constitution expressly confers power over police departments.[7] If the New

[1] *Ex parte Braun,* 141 Cal. 204 (1903); but a constitutional amendment of 1910 attempted to make a division between state and municipal sources of revenues; Art. 13, sec. 14.

[2] Section 1 of the proposal enjoins the legislature to "restrict their power of taxation", etc. Presumably, however, such restriction would have to be made in a law applicable in terms and in effect alike to all cities. While there are general tax laws, there are also many special provisions in city charters relating to taxation.

[3] *Mayor of Baltimore v. State,* 15 Md. 376 (1859); *People ex rel. Drake v. Mahaney,* 13 Mich. 481 (1865); *State ex rel. Attorney General v. Covington,* 29 Oh. St. 102 (1876); *State ex rel. Holt v. Denny,* 118 Ind. 449 (1888); *State ex rel. Atwood v. Hunter,* 38 Kans. 578 (1888); *Commonwealth v. Plaisted,* 148 Mass. 375 (1888); *State ex rel. Attorney General v. Moores,* 55 Neb. 480 (1898), overruled but not as to this point by *Redell v. Moores,* 63 Neb. 219 (1901); *Newport v. Horton,* 22 R. I. 196 (1900).

[4] *State ex rel. Attorney General v. McKee,* 69 Mo. 504 (1879); *State ex rel. Hawes v. Mason,* 153 Mo. 23 (1899); *State ex rel. Goodnow v. Police Commissioners of Kansas City,* 184 Mo. 109 (1904); *State ex rel. McNamee v. Stobie,* 194 Mo. 14 (1905).

[5] *Kahn v. Sutro,* 114 Cal. 316 (1896); *Popper v. Broderick,* 123 Cal. 456 (1899).

[6] *State ex rel. Zimmerman v. City of St. Paul,* 81 Minn. 391 (1900), where this ruling, however, was merely a matter of silent implication.

Constitution of Colorado, Art. XX, sec. 3.

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York courts abide by their earlier view that a police officer is a city officer, power to regulate all matters pertaining to the police will doubtless devolve upon cities under the home-rule grant.[1]

Whether or not a city may regulate matters pertaining to police or magistrates' courts has been a subject of judicial controversy in a number of the home-rule states, with the usual contrariety of opinion.[2] In the state of New York police courts are established by many city charters.[3] Will the judges of these courts be regarded as "city officers" whose "powers" may be regulated under the proposed home-rule grant? Here is another question of doubt. But attention should be called to the fact that in the section dealing with the time of municipal elections,[4] the expression that is used is: "All elections of city officers, including . . . judicial officers of inferior local courts." For at least one purpose, therefore, in this specific article, police judges or magistrates are expressly declared to be "city officers."

Instances of possible, not to say probable, controversies might readily be multiplied—instances drawn not from theoretical speculation but from the recorded experiences of home-rule cities in other states. Enough has been said, however, to indicate the kind of questions that are likely to arise, the kind of uncertainty into which the cities of New York will be delivered, and the kind of burden that will be imposed upon the courts in resolving this uncertainty.

[1] Presumably, however, the city would have no power to affect judicial review of administrative removals; for this would go to a matter of affecting the jurisdiction of the higher courts of the state. See above, p. 665.

[2] *Union Depot Rd. Co. v. Southern Ry. Co.*, 105 Mo. 562 (1891); *Ex parte Kiburg*, 10 Mo. App. 442 (1881); *Ex parte Loving*, 178 Mo. 194 (1903); *Miner v. Justices Court*, 121 Cal. 264 (1898); *Ex parte Sparks*, 120 Cal. 395 (1898); *Ex parte Ah You*, 82 Cal. 339 (1890); *In re Cloherty*, 2 Wash. 137 (1891); *State ex rel. Simpson v. Fleming*, 112 Minn. 136 (1910). In 1896 an amendment to the California constitution expressly conferred power over police courts (Art. XI, sec. 8½), and in 1912 similar power was conferred by specific amendment in Colorado (Art. XX, sec. 6).

[3] See, for example, the Charter of Rochester, *Laws of New York, 1907*, ch. 755, Art. XVI. The law creating magistrates courts in New York City is not incorporated in the city charter.

[4] Sec. 6.

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VIII

One or two other points deserve brief mention. Both the legislature and the city are, in precisely the same language, endowed with power to regulate the conditions of employment by municipalities or on public works[1]—a matter that is now regulated by the State Labor Law.[2] Presumably, however, the state law upon this subject would have to apply in terms and in effect alike to all cities; it would, therefore, take precedence over any contrary charter provision. Apparently the cities will be competent only to supplement the state regulations upon the subject; for it is difficult to see how so deliberate a contradiction of grants of power could be otherwise resolved.

The legislature is required to "provide by general law for carrying into effect" the home-rule grant.[3] It should be noted that the phrase here employed is simply "general law"; there is no requirement, so meticulously used elsewhere, that it shall apply in terms and in effect alike to all cities. It is impossible to say whether this is a result of careless drafting or of deliberate design. If the latter, it need only be remarked that the intention is lacking in clarity. Will the legislature (by the introduction of classification, for example) be able to provide a scheme of effectuation for New York that is quite different from the scheme provided for Sherrill?

Finally, it should be remarked, this proposal will permit a vast increase in the chaos of the already chaotic statutory sources of the government of cities. It will authorize cities to engage *ad libitum* in adding patches to the existing patchworks of their governments. In a few years the sources of their governmental organization and competence will be found in part in unrepealed (and perhaps unrepealable) provisions of their present legislative charters, in part in numerous other state laws that dovetail into and supplement charter laws, and in part in the "local laws" adopted by the cities themselves. All of the other home-rule states, except Oregon, Michigan

[1] Secs. 1 and 3.

[2] *Consolidated Laws*, ch. XXXVI, Labor Law, Art. II, sec. 3

[3] Sec. 3.

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and Texas, have compelled any city that sought to exercise home-rule powers to adopt *ab initio* a complete home-rule charter—to make, in other words, a fresh start in embarking upon its home-rule career. The New York proposal not only does not require this but also, because of its curious and novel terms, probably makes it impossible; for it is open to question whether the enumerated subjects of control are sufficiently comprehensive to enable cities to adopt approximately complete charters.

In two respects this New York proposal may assert primacy among its fellows: it is probably the most unnecessarily involved and the least generous of any of them.

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heir of Sismondi and Michael Sadler, the foes of historic Liberalism; and the Liberalism which he proclaims is indebted less to the precepts of Smith and Ricardo than to the theories of Guild Socialists and even State Socialists.

"Capitalism" is to be retained but it is to be profoundly modified. In every organized industry there should be a standing Council including not only trade-union representatives and spokesmen of the managerial and organizing side of industry but also directly appointed representatives of the brain-workers in the industry. Such a Council should have power to determine "living family wage-rates or salary-rates" for each type of labor, whether of hand or brain, the hours of work, the methods of workshop organization, and, in short, all the problems affecting the worker in his relation to industry. The agreed decisions of these Councils should, after being reported to the Ministry of Labor and laid upon the table in Parliament, be made binding as minimum conditions upon all concerns engaged in the industry.

For dealing with unemployment, a system of state insurance, supplemented by other forms of state action, should be continued, but "it is unwise to trust to state action alone, or mainly, for the solution of the problem". The primary responsibility should be thrown upon each industry, on the principle that every industry ought to maintain its own citizens out of its own product. In many industries it would be possible for the Council immediately to work out a fair scale of unemployed pay which the state could make obligatory.

Distribution of the returns on capital should be regulated. *Bona fide* new enterprises might be allowed a period of years, without limitation of profits, in which to establish themselves. Thereafter their ordinary shareholders might be limited to a defined rate of interest until a reserve fund had been built up equivalent to the amount of the total capital. The reserve should be regarded as the property of the concern as a whole—not of the shareholders. It might, in bad years, be drawn upon for the purpose of meeting the liabilities of the concern, including the payment of the defined rate of interest to the ordinary shareholders; but the shareholders should be forbidden to divide the reserve among themselves. After the reserve had been formed, all further profits beyond the defined rate of interest might be divided between the state, the workers in the concern, and the ordinary shareholders. Such an arrangement would provide a desirable substitution for an excess profits tax and would lead to genuine profit-sharing and copartnership.

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term which Worms proposes, and which after all, as he submits, is but a reversion to the earlier view of Comte himself — the great founder of sociology.

Striking and illuminating as is the subject matter, no less attractive is the admirable spirit of the volume, and those who, grown weary of controversy and conflict, are ready to welcome a voice of conciliation and a plea for sympathetic comradeship in science, will discover here a treasure in delightful French.

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Liberalism and Industry. By RAMSAY MUIR. Boston and New York, Houghton Mifflin Company, 1921.—xiv, 208 pp.

There are signs that Liberalism is again raising its head in England. In Manchester, the historic center of English Liberalism, a group of manufacturers and tradesmen have been discussing economic problems and elaborating a program of social reform. This program has now been put in writing by Mr. Ramsay Muir, with the assistance of Lord Haldane, and has received the endorsement of the General Council of the Manchester Liberal Federation.

It is Liberalism in the sense that it combats State Socialism on the one hand and Anarchism on the other. It is Liberalism also in the sense that it is inspired by the spirit of "Liberty". But much water has gone under the bridge since the days of Cobden and Bright, and the new Manchester School is far removed from the old. Either might say of the other, "Liberty, Liberty, what crimes are committed in thy name."

The old Liberalism championed the classical political economy of Adam Smith and David Ricardo—*laissez-faire* and individualism, freedom of trade and freedom of contract. Outside of the protection of private property, all state interference in economic matters was anathema. The new Liberalism, as set forth by Mr. Muir and his Manchester friends, frankly recognizes that those earlier doctrines tended in practical operation to justify "a very narrow and selfish view of a man's duty to his fellows" and to encourage "the acceptance of conflict instead of cooperation as the natural relationship between the organizers of industry and the workpeople". The new Liberalism therefore starts with the assumption that it is the duty of the state to secure for all its citizens such conditions of life as will make real liberty possible. Intellectually Mr. Muir is the

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she will specialize in the *vue d'ensemble* the value of which will be no less significant to the social arts than to the social sciences.

All this is most interesting, especially so when we note, as note we must, that the course of human thought is setting hard toward synthesis today. The mass of existent data, the systems of formulated laws, were once so limited that it could be said of one great mind that he knew all that was worth knowing in the world. That hour is past. In vain shall we wait for some super-mind to attempt what Spencer attempted with the then existing knowledge in his day. The synthesizing agency of the future will not be a single intelligence, but a science dedicated to this one great task, or rather perhaps a trio of sciences functioning for the three great divisions of research. Without in any sense misreading the clamorous movements of our time for more and more dictionaries, more and more encyclopedias and lexicons, and withal the striking phenomena of comparative studies on every hand, we may affirm that analysis has passed its zenith, and that the long awaited synthetic period is just over the horizon. In this light Worms may appear indeed like a herald when he announces the candidature of sociology for this new exalted rôle.

Meanwhile those who cherish less ideal, and more attainable ambitions for sociology as an integral social science with a definable sphere and province, may well continue their researches. Why try to decide the whole thing now? Sociology, whatever her fortunes or misfortunes, will be all the better for the varied and painstaking investigations of the thousands who work under the name. Perhaps the prolongation of infancy she is now experiencing may be prophetic of her exceeding greatness in the maturer days to come.

But to return briefly to our author. *La Sociologie* is a work of far greater importance than its number of pages might possibly indicate, and than this review thus far might lead one to suppose. Marked by fairness to men of other schools (among whom are cited our own Ward and Giddings in America), it is clearly, carefully and concisely written by one who thinks long while writing little. Perhaps it is in his chapter on sociological laws that Worms is at his best, and here, with characteristic modesty, he introduces a very real contribution to the laws of social evolution, i. e. that *l'unité et la multiplicité* constitute a simultaneous process in society. The examination of the various conceptions of sociology, the analysis of the content and the relationships of the subject, are so thoroughly done as to predispose the reader to the larger acceptation of the

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REVIEWS

La Sociologie, sa nature, son contenu, ses attaches. Par RENÉ WORMS. Paris, Marcel Giard & Cie., 1921.—164 pp.

In 1906 Émile Levasseur, at a congress of l'Institut International de Sociologie, held in London, is reported to have said something to this effect: "Conseillons la modestie aux sociologues". Sociologists have been so unregenerate that now again, fifteen years later, René Worms, Directeur of the *Revue Internationale de Sociologie,* must needs remind his readers of what Levasseur then had to say. Sociology suffers for want of modesty. When she limits her aspirations, she will be better received. Her enemies will become her allies. The economist will lie down with the historian, the moralist and the ethnologist together, and sociology shall lead them. Nay, more, she will become their *base* and *sommet,* their *point de départ* and their *point d'arrivée,* their *introduction* and *conclusion.*

Becoming modesty, for the author of *La Sociologie,* means nothing less than that sociology shall renounce her ambition to become a social science among social sciences, intent upon her own special field, and her own enquiries, and that she shall turn to her true rôle, which is that of a relating, synthesizing science, or rather—as Worms prefers to put it—the philosophy of the social sciences. The special social sciences have divided the social world. So well indeed has this been done that sociology is left, in the view of Worms, without a field to call her own. She will reconstruct the unity. Among them, each seeketh her own, and not another's good. She alone will seek the good of all. She will act the Alma Mater among the social sciences, and, like a good mother, find her own greatness in the greatness of those she serves.

Under the good offices of the new sociology, the special social sciences will carry on in more fraternal collaboration. No longer regarded as a competing rival, it will be hers to assign for them their tasks, to limit their objectives, and to guide their methods. When conflicts arise she will trace out the boundaries for each. She will rate the things which win approval, and make the special fruits of one accessible alike to all. She will strive for *unification* and *fusion* in social knowledge. A devotee of general principles,

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Railways and mines might properly be nationalized, but care should be taken not to overburden the Parliament and the political Ministry with their detailed management. They, and the postal service too, should be decentralized as far as possible and entrusted, as in Australia, to non-partisan boards of experts. Such a system "would avoid the Scylla of bureaucracy and ill-informed parliamentary meddling on the one hand, and the Charybdis of a producers' monopoly on the other".

Mr. Muir would grapple with the land problem chiefly through the taxation of unearned increment. Let every landowner be required, within a defined period, to assess the value of his own land, apart from the buildings on it, and let this valuation be accepted without question.

> On this basis the landowner will pay his rates; on this basis he will be taxed; and at this price the community can purchase his land when it is needed for commercial purposes. When the land changes hands either by inheritance or by sale to a private purchaser, there will be a new valuation, determined by the price obtained or by the valuation for probate. Any change in value as compared with the owner's original valuation will be due to one or more of three causes: to the expenditure of capital on the land; or to an alteration in the value of money; or to "unearned increment" due to the activities of the community. Let the changes in value due to the first two causes be allowed for, and any increase that remains will represent "unearned increment". The community may justly take the whole or any part of this increment. On the other hand there may be a "decrement", and in that case the new owner of the land is entitled to have his valuation for purposes of rates and taxes revised accordingly.

With these provisions for the valuation and taxation of land should be coupled a drastic and uniform Land Purchase Act.

The goal of English land reform must be a greatly increased agricultural production. With this purpose in view, the new Liberalism is willing to promote the establishment in England, as in France and Ireland, of small peasant proprietorship, with attendant land-banks and cooperative enterprise. It is even willing (shades of the anti-Corn Law League!) to have the state guarantee a price for foodstuffs and grant a bounty to farmers when the world price is lower than the guaranteed English price.

The vision is long and wide. There must be a "wise and forward-looking" policy for housing and the amelioration of cities and villages, for public health, for education of adults as well as of children, for the enlarging and refining of the arts, and for organized

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and systematic research. "Provision for these ends is essential to a sound industrial policy, though it looks to ends far wider than mere industrial success."

Mr. Ramsay Muir's formulation of a social program is not so doctrinaire as perhaps the foregoing résumé indicates. It is characterized throughout by a modesty, by a sweet reasonableness, and by a felicity of phrase of which true Liberals in any country or in any age may indeed be proud. It is a sane and timely contribution to social theory and should have a sobering influence upon extremists whether "socialists" or "capitalists".

CARLTON J. H. HAYES

Contribution à la Théorie Générale de l'État spécialement d'après les Données fournies par le Droit Constitutionnel français. Par R. CARRÉ DE MALBERG. Paris, Libraire de la Société du Recueil Sirey, 1920-22.—xxxvi, 837 pp.; xiv, 638 pp.

In these ample and well-written volumes Professor Carré de Malberg, of the University of Strasbourg, has begun what promises to be one of the most profound, as it certainly is one of the most pretentious, treatises on political theory. The first volume was written, and in part printed, before the Great War; although in an introduction supplied after the armistice the author gives it a fresh setting in the light of the stupendous political problems thrust into the foreground by the conflict. The second volume is of more recent composition; and others are expected to follow within such time as the magnitude of the task permits.

The first volume falls into two unequal parts, the briefer dealing with the constituent elements of the state, the lengthier being devoted to state functions. The constituent elements are reduced to three, i. e., people, territory and power. The vexed question of the origins of the state comes in for only brief and somewhat inadequate treatment. But state unity is stressed in a keenly analytical chapter; and the lengthy discussion of the nature and basis of state power comprises one of the best expositions of the various theories of sovereignty, and of the nature of federal government, to be found in print. Particularly instructive is a section in which the French origin of the concept of sovereignty is convincingly described.

From attributes the author passes to functions. Defining these as the several activities of the state "in so far as they comprise different manifestations, varied modes of exercise, of the state's power",

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he finds the three familiar functions of legislation, administration and justice; for, although he allows some force to the view so widely held in France since the Revolution that justice is only a phase of administration, and therefore not a distinct function at all, he points out that, as governments are actually organized, it *is* a separate function, and he prefers to regard it as such throughout his discussion.

Throughout the treatment of these state functions—as, indeed, in all parts of the work—the theories and concepts that are most fully described are those that have been, or are now, held in France; English, German and other foreign views are brought in usually for purposes of comparison rather than for their own sake. Thus in the chapter on the legislative function the longest section, some fifty pages, is devoted entirely to the conceptions of law manifest in the French positive law; and the discussion of the legal aspects of the promulgation of laws proceeds almost exclusively on the basis of French theory regarding the acts of the executive in this matter under the constitution of 1875. The student who is seeking a full and authoritative exposition of French theory of administrative law, and of the power of the executive to issue and enforce *décrets,* will find it here.

The already considerable literature of the separation of powers is notably augmented by an ample chapter on that subject which closes Professor Carré de Malberg's treatment of state functions; although this chapter—which appears at the beginning of the second volume—considers the subject almost exclusively in relation to French theory and experience. The doctrine of Montesquieu, though long in high favor among Frenchmen, is represented as having largely lost its hold; and the author himself accepts it only with many reservations. The notion of plurality of distinct powers he holds to be inconsistent with state unity, and he denies that a complete independence of governmental organs is practicable or an equality of them legally possible. In France, he says, the legislative chambers, checked by the electorate, have become supreme; and he considers that in every parliamentary government the tendency in this direction precludes anything like real separation and equality of powers; so far, at all events, as the legislative and the executive are concerned.

The second volume is devoted principally to the organs of the state, and here one finds discussed the rival theories of "popular" sovereignty and "national" sovereignty, the nature of representative government, the electorate, and the basis and exercise of the con-

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stituent power. Much under this general head remains to be dealt with in succeeding volumes. But the subjects mentioned are covered very fully in the present publication and receive copious consideration in separate chapters, in relation to French political thought and organization. Rousseau's atomistic conception of sovereignty, according to which sovereignty is vested separately in all of the members of a society, so that each person separately possesses a fraction of the whole, is emphatically rejected in favor of the view of French positive law, which finds sovereignty only in the nation as a whole, i. e., the unified and indivisible body of citizens; and the reasons, both juridical and historical, for the triumph of this conception are clearly expounded.

In discussing the nature and basis of representative government the author goes very fully into the rôle of the representative himself. Indeed, there has been, for France, no better treatment of this vitally important matter. From 1789 onwards the law of France has consistently prescribed that the deputy shall be considered, and hence shall consider himself, a representative of the nation as a whole, and not of the constituency which elected him. This, in the opinion of Professor Carré de Malberg, is as it should be. Nevertheless, every observer of French parliamentary life and governmental activity knows that, in point of actual fact, the deputies come up to Paris feeling themselves to be the agents of their constituents, and are looked to by the latter to obtain practical benefits for the constituency, very much as in the case of members of Congress in the United States. Professor Carré de Malberg is obliged to concede that this is true; and this steadily growing power of the voters over their representatives he portrays as an extra-constitutional, and somewhat undesirable, infiltration into representative government of the tendencies and characteristics of direct government.

To say that in the realm of French political theory these volumes fill some such place as in the field of French constitutional law is occupied by the works of Esmein and Duguit, is to accord high praise. But it seems to the reviewer to be deserved. The work is well arranged and lucidly written; almost every topic taken up is treated exhaustively; source and secondary authorities are cited and quoted copiously; the author never permits himself to become lost in airy abstractions; and if on some matters he seems to have no very clear opinions of his own, this is apparently because of his unremitting effort to give all rival or differing views a fair hearing.

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Diplomatie und Weltkrieg. Von Graf JULIUS ANDRÁSSY. Berlin und Wien, Ullstein & Co., 1920.—349 pp.

Diplomacy and the War. By Count JULIUS ANDRÁSSY. Translated by J. H. REECE. London, John Bale, Sons, and Davidson, Ltd., 1921.—323 pp.

This is one of the most interesting and valuable books in the flood of post-war literature. For it is not, except perhaps in the last section, an *apologia,* but a searching examination of the causes of the great catastrophe and of the collapse of Austria-Hungary. It is, surely, one of the ironies of history that the younger Andrássy, as the last foreign minister of the Dual Monarchy, should have been the instrument for the dissolution of the system which his brilliant father had largely created and directed. Was this fate deserved? In considering the author's opinions, some allowance must be made for the fact that, though long active in Hungarian politics, he was seldom in office, and he not unnaturally argues that he would have managed matters otherwise. Nevertheless, he writes without rancor, except as regards Count Michael Károlyi; he tells a good deal not hitherto known, and he throws off many penetrating judgments and apt phrases for which the historian will be grateful. The German version, presumably the translation of a Magyar original, reads very smoothly and easily.

Count Andrássy's view, as set forth in the first section of his book, is that the war was "the result of mistakes, hatred, and a thoroughly rotten situation rather than of political calculation", "of the general conviction that it would break out sooner or later"; at times he comes fairly close to accepting the Socialist contention that it arose primarily from the conflict of rival imperialisms. But, although he considers the Anglo-German antagonism the most important element in the situation, he remarks that there was "no real conflict of interests", and that an agreement was possible at any time, whenever Germany chose to exhibit reason on the naval question. Indeed, he is so reluctant to ascribe any aggressive intent to British statesmen that he emphasizes their offer of an alliance early in this century, the refusal of which by Germany was "quite the greatest justification of [England's] later policy". The Entente, that "*non plus ultra* of diplomatic skill", was the inevitable reply to German ambitions, which Count Andrássy goes so far to condemning as to regret that the German policy in the East sought

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"no longer the protection of the Christian peoples of the Balkans and pacification by reforms and autonomy", but "a military alliance with Turkey, and the economic exploitation of the whole of the Balkans and Asiatic Turkey"; a policy which, he avers, was not that of Austria-Hungary. He is clearly of the opinion that Germany, by trying to play off Russia against Britain, had only herself to blame for the situation in which she found herself.

Such frankness is hardly to be expected in his treatment of the Balkan problem. He condemns vigorously the policy pursued by Aerenthal and Berchtold, but his own solution was equally dangerous, for he would have compelled Serbia, if necessary by armed force, to accept a close alliance with the Monarchy which would have excluded Russian influence altogether from the Balkans. What the Count says about Russian intrigues in Serbia and elsewhere is no doubt true, but he cannot see that it was the striving for an Austrian monopoly which made Russia desperate and forced her in 1914 to stand forth as Serbia's champion; no more can he, as a Magyar magnate, admit that it was the disastrous policy of his clique in Croatia and Bosnia which was chiefly responsible for the existence of a Serbian question. Apart from this, he is fair enough, and he doubts if Russia wished war in 1914, admitting that the Russian mobilization, of which the Germans make so much, may have been due to a genuine "fear of an attack from our side". "Who can deny", he concludes, "that in our attitude much might lead to the belief that we desired a world war?"

In the second part, the conduct of the war by the Central Powers, from the invasion of Belgium, "the first illegal action", to the Peace of Brest-Litovsk, is relentlessly, if rather obviously, criticized. The third part, on the other hand, presents an illuminating picture of Hungarian politics before and during the war, in which Tisza appears as the evil genius. The description of Francis Joseph as "bureaucrat of the first water" is but one of many concise judgments.

It is the last section, however, which is of the greatest value, for the Count describes his efforts to salvage the Monarchy when the federalist manifesto of the Emperor-King showed him—apparently for the first time — that "we had lost the war". Andrássy was "bowled over" by this "bomb explosion" but accepted the post of foreign minister on October 24, 1918. His program called for a personal union between Austria and Hungary, autonomy for the nationalities of Hungary, and a new franchise: which might have

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sufficed a generation earlier. The Count rightly spurned the pleas of the German General Staff that they could hold out till spring, and, by a separate peace, hoped to preserve the Habsburg dominions before the Allies were committed to the subject nationalities. According to him, this was spoiled by Károlyi, who, trusting in President Wilson, seized the government at Budapest, recalled the Hungarian troops, and deposed the king by telephone! Andrássy cannot forgive Károlyi for staging this "historical *première*" on Hungarian soil, but he recognizes the lead given by his predecessors, who had "made use of the catch-words of socialism and defeatism" while they "pursued a war policy in the spirit of Ludendorff".

The book concludes with some acute observations, evoked by subsequent events in Hungary, on the impossibility of controlling revolutions. The Bolshevist experiment in Hungary came about because there was no other way of getting rid of Károlyi, and failed in turn because "people needed bread, laundry and clothes, not socialization, playing politics, and everlasting meetings". So Count Andrássy, the conservative and monarchist, compliments the republican and socialist government of Germany for "having the courage to make itself unpopular". To those who value sane realism in politics, this book may be commended as one to be read and to be pondered.

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The Myth of a Guilty Nation. By ALBERT JAY NOCK ("HISTORICUS"). New York, B. W. Huebsch, Inc., 1922.—114 pp.

This book comprises a series of articles originally published in the *Freeman,* the author using the pen-name of "Historicus". The one and only purpose of the work, as avowed by the author, is to establish the point "that the German Government was not solely guilty of bringing on the war". By establishing this point he hopes to aid in accelerating the movement for modifying and ultimately annulling the Treaty of Versailles. His line of argument is as follows: The treaty was framed on the assumption that the Central Powers alone were responsible for bringing on the war, and this postulate is the only ground on which the treaty can be defended; the provisions of the treaty are outrageous and are impossible of enforcement, because they defy economic laws that are as immutable as the law of gravitation. The efforts to enforce these provisions

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would not only ruin the Central Powers but would also bring economic distress to the other countries, including the United States, that are bound to the Teutonic Powers by economic bonds. Therefore, to aid in the annulment of the Treaty of Versailles would be to perform a valuable service not only to Germany and Austria but also to the United States and the other Great Powers.

The author is of the opinion that the "German Government's share of guilt in the matter is extremely small", and that the Allied Powers are mainly to blame for bringing on the world conflict. In support of this opinion he endeavors to show that England was inspired by jealousy of Germany due to economic rivalry and was doing all in her power to isolate her rival during the decade preceding August, 1914; that the French and British military authorities had been "in active collaboration for war with Germany ever since January, 1906"; and that Russia, supported by France, had been preparing for war since 1909. Practically nothing is said of the negotiations that took place during the eventful twelve days that preceded the outbreak. The fact that Austria, certainly with the permission if not the encouragement of Germany, started the war by an unjustifiable attack on Serbia, is entirely ignored. Apparently he fails to appreciate the importance of the immediate causes in apportioning the blame for the great war.

The desire to create a sentiment in favor of a conquered people is to be commended, and any worthy effort to tone down the prejudice of our people against their former enemies should be encouraged. But when anyone essays this difficult rôle he should be peculiarly fitted by training and temperament for the work. To defy successfully a well-entrenched prejudice, a writer should be well armed with evidence and should be able to present it in a cool, dispassionate manner. The author of this work does not meet either of these tests. The unrestrained partisanship exhibited by him antagonizes the reader and the evidence offered is not sufficient to overcome this antagonism. His range of sources is narrow. He gets nearly all of his material from three books written by E. D. Morel and Francis Neilson. From these works he has gathered some documentary evidence in support of his contention, though not enough to convince the reader that he has sustained the charges made against the Allies. He quotes from the reports made by Belgian diplomatic representatives at Paris, London and Berlin to the Belgian foreign office covering the period from February, 1905, to July, 1914. He also refers to and quotes from the Russian documents made public by the Soviet

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authorities. However, he does not make as good a use of the Russian documents as he might have done. For example, he says that they show that France and Russia, and England and France, had entered into secret treaties of alliance in 1912, but he does not give the texts of any of these treaties. While much that he says is true, yet the evidence presented is often not convincing even in the case of admitted facts.

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WEST VIRGINIA UNIVERSITY

Immortal Italy. By EDGAR ANSEL MOWRER. New York, D. Appleton and Company, 1922.—ix, 418 pp.

Generally speaking, ancient Italy is better known to us than is modern Italy, much less remote in time, but farther removed from genuine understanding and appreciation. Mr. Mowrer's volume is an attempt to bridge this wide gap. As correspondent of the *Chicago Daily News* for many years, he has had extended opportunities for studying Italian characteristics and institutions, and has taken full advantage of his unusual contacts with men and affairs. This is not the systematic work of an historian or an economist, but the study of a highly intelligent journalist, who writes largely on the basis of his intimate observation of conditions that came before him. Much of his history comes from Bolton King, but this is not the best part of *Immortal Italy*. Mr. Mowrer's own comments are more effective, for he does better when he is "on his own", observing and appraising as he goes, and almost always going.

The writer's introductory characterization of the Italian is artistically executed, Italian in its frankness and in its idealistic conclusions. "Everything in Italian life is better than it seems", is his paradoxical conclusion. His discussion of Italy's entrance into the War is illuminating and valuable as the comment of a trained observer. Mr. Mowrer's consideration of Baron Sonnino, the Jewish-English, Egyptian-born champion and leader of Italian nationalism, is of great interest. The author acutely says that, "What the pious statesmen of other nations have never pardoned him was that he refused to pay verbal homage to principles that he did not intend to serve." The conclusion is that, "The real cause of Italy's diplomatic defeat at Paris and her undeserved humiliation was the stubborn temperament of the silent Minister of Foreign Affairs." His rugged inflexibility was at once the source of his strength and his weakness, Mr. Mowrer believes.

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Very readable is the chapter on "Fiume o Morte", dealing with D'Annunzio's vivid régime in the little city that became a storm center of international politics for two hectic years. "The Revolution that Never Was" discusses with great insight the relations between the Italian Socialists and the Russian Communists, ending in the breach between the redoubtable Serrati and the pontifical Lenine, and in the independence of the Italian Left. Mr. Mowrer's description of the origin and tactics of the Fascisti is helpful in obtaining a clear view of this significant movement, so widely discussed and so little comprehended.

The concluding chapter on "Present Problems" is brief, too brief, but full of interest and suggestions. A fuller discussion of Turati's plans for the future development of Italy would not have been amiss. Despite the economic deficiencies and the political shortcomings which he depicts, the writer has faith in the future of the Italian nation—a prophet of the Italian idealists. "Sooner or later this country", says he, "with its wholly admirable sense of civilization, its brilliant flowering of individual genius, its wide tolerance and humanity, will inevitably take a great part in the evolution of world culture and politics."

On the whole, Mr. Mowrer's volume is a very readable and useful contribution to the understanding of the Italy that is in the making. This is not a work of broad historical knowledge, detailed analysis of economic and social facts, discriminating discussion of technical points in law and government, although by no means without a factual basis and plenty of keen anaylsis. It is a sympathetic and competent interpretation of the social and political life of a great state which is perhaps less understood than any of the modern members of the family of nations, and which merits much more ample recognition than it has yet been accorded.

CHARLES E. MERRIAM

UNIVERSITY OF CHICAGO

The Great Adventure at Washington: The Story of the Conference. By MARK SULLIVAN. New York, Doubleday, Page and Company, 1922.—xi, 290 pp.

In this book, Mr. Mark Sullivan, the national political correspondent of the *New York Evening Post,* has written a very interesting, easily understood, impressionistic account of some of the plenary sessions of the Washington Conference. His "Story" is marked with excellent word-pictures of many of the delegates and

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many of the conference scenes. The picturesque descriptions of Lord Beatty's eyes, Hughes's whiskers, Lord Lee's pencil, Wells's jingoism, Balfour's frock-coat, Briand's oratory, Lord Riddell's propaganda, Mrs. Koo's Parisian clothes, Senator Lodge's resemblance to a tom-cat (p. 207), Kato's inscrutability, and the French fuss over the table-seating — will interest many readers who care little about the serious work of such a diplomatic body.

As to the actual results of the Conference, Mr. Sullivan draws at least three conclusions. First, in agreeing to the American proposal for the limitation of armament, Great Britain made a "gesture" (a word of which he is very fond) which was "unique in history". Second, France was the villain who prevented the consideration of land disarmament and the limitation of submarines and auxiliary craft. Third, "The questions of the Far East were not an essential part of that great adventure" (p. 267).

Some of these conclusions may well be challenged. As a matter of fact, England's voluntary "surrender" of the supremacy of the seas, over which Mr. Sullivan rhapsodizes for several chapters, was a foregone conclusion when the Conference was first convened. With the destruction of the German fleet as a result of the Treaty of Versailles and at Scapa Flow, the practical reason for maintaining the traditional British two-power navy disappeared. Because of this reason and of the penurious financial condition in which England found herself, the British Admiralty made the revolutionary announcement in March, 1920, that henceforth Great Britain would be satisfied with a fleet only as strong as that of any other single power. The chief naval significance of the Washington Conference lay not in the ratification of this decision, but in the surrender, on the part of the United States, of the supremacy of the seas which she would have gained in three years if she had carried out her 1916 building program.

Mr. Sullivan says, "I have tried to be as complete as possible about the negotiations to limit armament" (p. 267). Yet instead of describing the respective naval programs of the powers, such as the British two-power standard, the American 1916 program, and the Japanese eight-eight program, he says that at the end of the war "We began a programme of greatly stimulated building", and, when the conference opened, "we were in a position where our navy approximated Great Britain's" (p. 280). In discussing the negotiations over disarmament, he goes into the case of the *Mutsu,* but he does not mention the great significance of the non-fortifica-

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tion agreement in regard to the Pacific Islands. This agreement means much more to Japan than does the retention of the *Mutsu*. It means that the United States can build no naval bases in the Pacific (outside of Hawaii), and without them her fleet cannot effectively operate. Mr. Sullivan does not mention Singapore or the Bonin islands, which were by no means unimportant factors in these negotiations. Neither is he "complete" in the submarine controversy. He doesn't mention the Castex affair. He does say that Mr. Root introduced four resolutions in regard to submarines (p. 184). But he does not say what these resolutions were or what they really purported to do, except to reduce the "effectiveness" of the submarine. He doesn't mention the question of aircraft or of poison gas. Any account which claims to be as "complete as possible" in regard to the armament negotiations ought to explain these matters.

Perhaps the most vulnerable point in Mr. Sullivan's interpretation of the Conference is his assertion that Far Eastern affairs were not an essential part "of the great adventure". This is apparently a case where the wish is father to the thought. Mr. Sullivan says (p. 250), "I am not well grounded on Far Eastern matters". In the perfunctory observations he does deign to make in regard to the Orient, he often goes astray. The Anglo-Japanese Alliance was first negotiated in 1902 — not in 1901 (p. 228). It is difficult to justify Japan's position in regard to Shantung on the ground that she took it through "honest warfare" (p. 253). Even this statement is questionable in view of the violation of China's neutrality in the Tsingtau campaign and of Japan's refusal to agree to China's suggestion that all European holdings in the Orient be neutralized during the war. It is also inaccurate to say that "Japan has little or no Chinese territory that she took direct from China" (p. 252), when Japan forced China, in the treaties of May, 1915, to extend the Manchurian leases until 1997. The statement that "The Anglo-Japanese Alliance was not a contract which automatically came to an end on a fixed date" (p. 236) is also misleading because, despite Lord Birkenhead's interpretation, the alliance was negotiated for a term of ten years.

Mr. Sullivan says that the Chinese delegation frankly admitted that "they had not seriously hoped" that all of the Ten Demands would be granted. In proof of which he offers Dr. Wang's statement that China did not propose the "immediate and complete solution of extraterritoriality". Here Mr. Sullivan misses the point entirely, because China did not ask for the immediate solution of

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this problem in her Ten Principles, but merely for its "progressive modification". Again he says that Japan "settled the Yap controversy with Hughes in a manner satisfactory in detail to both countries" (p. 249). Yet the record shows that the United States demanded the internationalization of Yap, which still remains a Japanese mandate. He says that "it is certain" (p. 226) that the "homeland interpretation" of the Four-Power Treaty did not originate with Japan. But the reviewer has good reason to believe that it originated with Baron Shidehara, although from the first some members of the Japanese delegation were opposed to it. As for the Four-Power Treaty itself, he refuses to analyze its terms, and he is impatient with any "comma hounds" (p. 216) who are ungenerous enough to question the wisdom of the American Delegation in signing this treaty, which he dismisses as a relatively "minor matter" (p. 224). Yet elsewhere he contradicts this judgment by saying that "no agreement for the limitation of navies could be satisfactory if any two of the nations within the agreement were bound together by an inner alliance" (p. 232), which it was the purpose of the Four-Power Treaty to set aside.

Practically every day of the Washington Conference was taken up with Far Eastern affairs. Ten more meetings of the Committee on the Pacific and Far Eastern questions were held than of the Committee on Limitation of Armaments. There were thirty-six meetings on the Shantung question and many secret discussions in regard to the Anglo-Japanese Alliance. Yet Mr. Sullivan says that these matters were not an essential part of the Conference!

Mr. Sullivan ignores the pressing question of Japanese imperialism and warns America against getting excited about "some international bugaboo" (p. 228). He regards naval competition as an end in itself—as the primary cause of war. But actually navies are maintained to further certain political ends. The Washington Conference simply told Japan that she could have these ends without fighting for them. But this does not mean peace. Mr. Sullivan tries to be fair to France, and in the main he succeeds. As long as the United States refuses to cancel the war debt and to take a part in maintaining the peace of the world, it does about as much good to chide France for sticking by the Treaty of Versailles as it does to prod an elephant with a tooth-brush. But from the great space Mr. Sullivan allots to the obstruction of France at Washington, the reader is apt to get the impression that France was far worse than Japan and that, in fact, Japanese imperialism never existed.

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If the aggressions of Japan continue as they have in the past, it is certain that war will eventually break out in the Orient, and it will probably spread to the western world. If public opinion is properly informed and mobilized, Japanese aggression can be peacefully checked before war becomes inevitable, and Japanese liberalism can be helped into power. But Mr. Sullivan does not attempt to awaken public opinion to the real task ahead of it. It is his idea that "The Great Adventure" is over and the millennium has come. Instead of summoning the Moral Force of the world to a new and more vigorous crusade, he pats it on the back, tells it that the Conference did things "on a vastly larger scale" than the Romans of old (p. 264), and then tucks it away to sleep.

RAYMOND LESLIE BUELL

HARVARD UNIVERSITY

A Short History of the British Commonwealth. By RAMSAY MUIR. Volume I. The Islands and the First Empire (to 1763). New York, The World Book Company, 1922.—xvi, 824 pp.

This is the most recent effort to trace, in comparatively brief compass, the historical growth, from the earliest times to the present day, of the British Isles into a great World Power, including within its far-flung area several associated but self-governing Dominions. In a very appreciative introduction Professor Muzzey states that: "no one till now has reviewed the whole course of English History as a development of a self-governing community within the island, expanding into a community of self-governing states in a federated commonwealth." Doubtless the author has featured this aspect of the subject in his title and at intervals in his presentation of the subject; but the view which he expounds has prevailed for some years. Moreover, while some bits of fresh information are provided, while accepted ideas are not infrequently brought into bolder relief than hitherto by paragraphs of effective phrasing, and while contemporary European events are woven into the narrative with unusual skill, we have, in the main, a retelling of the familiar story—and in a fashion not wholly free from criticism. For example, the apparent omission of any use of the studies by McIlwain and Pollard leaves the reader with a somewhat old-fashioned view of medieval parliaments; indeed, the treatment of the institutions of this period, especially on the legal side, leaves something to be desired, and, to go further into the general field, a few stock statements are accepted that are now believed to rest upon insecure foundations. Professor

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Muir has a keen eye for essentials, he has a nice sense of proportion and is decidedly successful in excluding irrelevant details; on the other hand, he has a proneness to a fault—not uncommon among writers brought up on the history of their own country — of introducing incidents which he does not adequately describe or explain, thus leaving the legitimate curiosity of the reader unsatisfied. The style is clear and flowing; but, for the fastidious, is marred at intervals by the repetition of a word or the selection of a variant of the same word within a sentence or two — a possible indication of haste in composition. Among the chapters most to be commended are the two on "Changing Social Conditions" in the fourteenth century, and "The Social Organization of the British Commonwealth" in the middle of the eighteenth century, both of which are exceedingly well balanced and informing. At the ends of chapters fairly well chosen bibliographical lists are given; but they are decidedly too scanty except for the uninitiated; apparently an atlas is in preparation to accompany the text, and a chronological index, or list of dates and events, occupying ten pages in double columns should prove very helpful; unfortunately, however, there is no sign of any genealogical tables. Taking everything into consideration, so far as one can judge from the first volume, this should prove an excellent work for those who wish to learn, without too extensive reading, about the strivings and achievements of the British people.

ARTHUR LYON CROSS

UNIVERSITY OF MICHIGAN

The Influence of the Sea on the Political History of Japan. By VICE-ADMIRAL G. A. BALLARD, C.B. New York, E. P. Dutton and Company, 1921.—vii, 311 pp.

Ever since the appearance of Mahan's *Influence of Sea Power in History* various writers have called attention to the importance of naval power in this or that region, or its bearing upon the solution of some international problem. Admiral Ballard in the volume under review tells the interesting story of Japan's phenomenal rise to power through the mastery of the sea in eastern Asia.

During the two hundred years of seclusion which preceded Perry's visit, Japan forbade her subjects to go abroad, allowed no foreigners to land in her territories, and prohibited the building or use by her people of any sea-going junks. The sea was her sufficient defense for that time. But when Perry's great black warships, moving under steam-power, came into Yokohama Bay, Japanese statesmen

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were not long in discovering that the age of seclusion was past. The building of a modern navy became one of their earliest undertakings after the opening of their country to Western intercourse. In this they were more successful than their neighbors, the Chinese, whose plans for the acquisition of a powerful fleet were abandoned to please the whim of an ignorant and wilful empress, who diverted the naval fund to the building of a costly summer palace for herself.

In Japan's next invasion of Korea, during the war of 1894 with China, Hideyoshi's mistake was not repeated. Control of the sea was established from the very beginning. The Chinese, with their happy-go-lucky methods of government, were as usual unprepared for war and, although they possessed some good vessels, were sadly in lack of ammunition. This, it is generally understood in the Far East, was the principal reason for Ting's withdrawal to Wei-hai-wei after the battle of the Yalu, which at the time was considered as a draw.

In his discussion of the causes of the war with China, Admiral Ballard scarcely does justice to the claims of China in Korea, for there can be no doubt of the existence for many centuries of the relationship of vassal and overlord between the Korean King and the Emperor at Peking. Tribute was sent regularly up to the year of the war, 1894. On the other hand, Korea was never tributary to Japan. But, while Korea was the bone of contention between China and Japan, the war could have been avoided, and possibly would have been avoided, had it not been for the domestic situation in Japan. Admiral Ballard makes a mistake in his statement (page 131) that the Japanese suggested mutual withdrawal of troops from Korea by China and Japan, and that the Chinese refused to agree. The exact reverse is the truth. The Chinese proposed simultaneous withdrawal, but the Japanese refused.

In 1894 the liberal party in Japan was agitating for a more popular form of government, for real legislative power on the part of the parliament and for a cabinet responsible to parliament. After two dissolutions of parliament, Ito found the government still in the minority and plunged the country into war to put an end to factional disputes at home.

Japan's plans for conquest and annexation of Formosa, the Pescadores, Saghalien, the Kuriles, Korea, Manchuria, eastern Siberia and Kamtchatka were outlined by Yoshida Shoin in 1854. The Japanese Government of course has never avowed such an intention, but Yoshida Shoin was the teacher of Ito, Shinagawa, Inouye and other

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leaders of the Restoration, and thus far the Government has pretty faithfully followed the plan proposed. In 1914 Mr. Tokutomi, editor of the *Nichi Nichi Shimbun* of Tokyo, published the life of Yoshida Shoin and concluded the biography with the observation that the plan had been almost entirely executed.

Admiral Ballard is a frank admirer of the Japanese, and as a naval officer he undoubtedly found much worthy of admiration in the seamanlike qualities of his Japanese colleagues. He estimates very highly, and with good reason, the importance to Great Britain of the Anglo-Japanese Alliance, pointing out the great blunder of Germany in 1897 in alienating Japan and making of her a potential enemy when she might have been an ally (page 177). He notes in an interesting manner how greatly the course of the World War would have been changed had Japan been an ally of Germany instead of Britain.

The naval operations of the Russo-Japanese War are also brought under critical review. The handicap under which Russia fought so far from her base, with which she was connected only by one single-track railway, is recognized. But the Admiral is slightly in error in saying (page 285) that the Russians were forced to evacuate Manchuria and that the evacuation was made permanent. They were forced out of the leased territory of the Liaotung Peninsula, but remained in northern Manchuria, and their rights in the northern section of the South Manchuria Railway and in the Chinese Eastern Railway are still admitted.

In his concluding chapter the author makes reference to the immigration of Japanese into the United States. He says (page 293):

> Four-fifths of the population of the United States are of pure European extraction, and history makes it abundantly clear that Europeans and Asiatics are so constituted that they can never occupy the same country in peace unless one or other occupies the position of an inferior race. . . . These plain lessons should make it clear to anyone that a wholesale Japanese emigration to the United States would be as bad for Japan as for America.

But the Admiral's argument fails to convince us that this racial exclusiveness requires the Western world on its part to recognize Japan's political, military and economic interests in the Far East as paramount. Why must the rights of other peoples of the Far East in their own lands be made secondary to those of the Japanese? The Japanese have a perfect right to emigrate to any country that does not forbid their coming, but that does not mean that the Japa-

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nese Government must, because of such emigration, be allowed to follow them with their own political and military domination in territories belonging to others. Japan's aggressions on the continent of Asia seem to indicate a desire to annex the territories to which her people are inclined to emigrate.

E. T. WILLIAMS

UNIVERSITY OF CALIFORNIA

Life of Robert, Marquis of Salisbury. By His Daughter, LADY GWENDOLEN CECIL. London, Hodder and Stoughton, 1921. —2 vols.; viii, 353; vi, 390 pp.

In these two volumes on the life and work of her father, Lady Gwendolen Cecil brings the story of his public career scarcely beyond its threshold, for she closes with the Conservative defeat in the General Election of 1880, before Lord Salisbury had assumed the leadership of his party and five years before the beginning of the first of his three administrations. She does not disclose her intentions, but if she plans to carry what she has begun to completion, we may look forward to a biography which, in length at least, will not fail to do justice to the importance of its subject.

The two matters of greatest public moment with which Salisbury was concerned during the period of his life covered by these volumes were Parliamentary Reform and the Eastern Question. To the former the author devotes nearly half of her first volume, to the latter approximately two-thirds of her second. In 1852 Lord John Russell abandoned for the Act of 1832 the claim of "finality" which he had previously made, and throughout the years in which Salisbury (then Lord Robert Cecil) sat in the House of Commons (1853-68) the parliamentary atmosphere was charged with the reform agitation. In his stalwart opposition to the advance of democracy Lady Gwendolen evidently believes that her father was battling for a lost cause. In discussing the Reform Act of 1867 she writes:

> Upon one point opinion would now be probably agreed,—that, whether for good or evil, the change was inevitable. To go no further back into original causes than the Act of 1832, it is apparent that the democratic principle then established was bound, sooner or later, to become supreme over every competing influence. . . . The decree had been pronounced, and, however unconsciously, the combatants were only engaged in disputing the time and form of its publication (vol. I, p. 286).

Yet on grounds of party ethics and loyalty to political principles

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she is as clearly sympathetic with him in his attitude toward the Tory-Radical Bill of 1867, his resignation from office and his breach with his party leader. To Disraeli "dishing the Whigs" was the acme of political astuteness; to Salisbury it was an unpardonable betrayal of honor and of all that justified party government. In an article entitled "The Conservative Surrender", which he contributed to the *Quarterly Review*, he wrote:

> Our theory of Government is, that on each side of the House there should be men supporting definite opinions, and that what they have supported in opposition they should adhere to in office; . . . if you reverse that, and declare that no matter what a man has supported in opposition, the moment he gets into office it shall be open to him to reverse and repudiate it all, you practically destroy the whole basis on which our form of government rests, and you make the House of Commons a mere scrambling place for office. . . .

The day had not yet come when a statesman's readiness to jettison any or all of his proclaimed political principles was to be taken as evidence of a broad and open mind, and it is probably true that Salisbury "owed much of the influence which he eventually achieved to the conviction of his moral steadfastness which the public acquired at this time" (vol. I, p. 287).

Whatever may have been Disraeli's defects of character, vindictiveness was not one of them, and when Conservative victory at the polls brought him to power in 1874 he invited the man who had assailed him so bitterly to become a member of his cabinet. Though Salisbury had declined a similar offer six years before, on the ground that his personal honor would not be safe in Disraeli's keeping (vol. I, p. 291), he now accepted, though with evident uneasiness. "The prospect of having to serve with this man again is like a nightmare", he wrote to Lady Salisbury. "But except intense personal dislike, I have no justification for refusing. There is no temptation to him to be Radical in this Parliament—for his majority cannot be less than 50" (vol. II, p. 46). We are free to surmise, if we choose to, that the lure of office had its influence on him in making this crucial decision of his career.

The copious extracts from Salisbury's private correspondence which are given in the detailed chapters on the Eastern Question throw a great deal of light on British diplomacy preceding and during the Congress of Berlin and on his part therein. Salisbury never sought in any public utterance to deprive Lord Beaconsfield of the prestige of having secured "peace with honor". He objected

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to pomp and circumstance in connection with a diplomatic victory and made no effort to elbow his chief, to whom it was so dear, from the center of the stage. No doubt the Prime Minister's presence at Berlin had its effect, but it was the preliminary agreements with Russia, Turkey and Austria, negotiated by Salisbury, that made the Congress possible, and the conclusion to be drawn from the material which Lady Gwendolen puts before us, though she herself does not draw it, is that Beaconsfield's personal share in the work of the Congress has been greatly exaggerated. In a private letter from Berlin, never intended for publication, Salisbury wrote: "What with deafness, ignorance of French, and Bismarck's extraordinary mode of speech, Beaconsfield has the dimmest idea of what is going on—understands everything crossways—and imagines a perpetual conspiracy" (vol. II, p. 287).

Whatever criticisms may be made of Lady Gwendolen's work, she cannot fairly be accused of exhibiting obtrusive filial piety. Some of her chapters could have been written only by a member of Lord Salisbury's immediate family, but even in the most intimate passages there is a certain air of detachment. She never descends to hero-worship or blind partisanship. As Foreign Secretary her father, she tells us, "was by no means an ideal chief" (vol. II, p. 233). His greatest defect was his unwillingness to delegate responsibility. "He must not only direct a policy, he must take every step in its pursuit. . . . This pervading and exclusive self-dependence was a real misfortune" (vol. II, pp. 234-5). He did not argue well; "he was too keen to win, too prone to the methods of debate" (vol. II, p. 11). Nor did he always give evidence in his diplomacy of great insight and prescience. The division of Bulgaria effected by the Congress of Berlin, upon which he had been resolutely insistent, proved of short duration, for seven years later, in 1885, with his sympathy and consent, Bulgaria was united. In the author's opinion the importance which he attributed to this issue "suffered from the exaggerating influence which conflict always engenders and from which he was too much of a born fighter to remain free" (vol. II, pp. 299-300). Lady Gwendolen, it may be added, displays no inordinate pride of ancestry. For more than a century and a half following the death of Robert Cecil, son of the great Lord Burleigh and for a time chief minister of James I, "the general mediocrity of intelligence which the family displayed was only varied by instances of quite exceptional stupidity" (vol. I, p. 1). Such of Lord Salisbury's gifts as are to be attributed to heredity came, we are led

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to believe, not from the Cecils but from his mother and paternal grandmother (vol. I, pp. 2-8).

Of the historical worth of these volumes there can be little question. The student of English history, political, constitutional or diplomatic, will glean much new information from them, nor will one whose main interest lies in social or religious conditions come empty-handed from reading them. The extracts from Salisbury's writings and correspondence which they contain would alone justify their publication. As an achievement in letters the biography is of uneven merit. There are passages, notably the description of Lady Salisbury (vol. I, p. 53 *et seq.*), that show high capacity for portraying personality. The chapter on Salisbury's writing is an excellent and remarkably detached piece of literary criticism, and that on his religion discloses powers of subtle insight and analysis. In other chapters, however, especially those on the Eastern Question, the author does little more than supply sufficient cement to hold together the matter from Salisbury's correspondence which she quotes.

R. L. SCHUYLER

Wall Shadows: A Study in American Prisons. By FRANK TANNENBAUM. New York, G. P. Putnam's Sons, 1922. — xvii, 168 pp.

During the last few years there has been a revival of interest in the subject of penology unequaled, perhaps, since the "seventies" of the last century. This interest has in some cases found expression in elaborate compilations describing the historical development of prison methods and the growth of penal legislation. The Report of the New Jersey Prison Inquiry Commission, Philip Klein's *Prison Methods in New York State,* and L. N. Robinson's *Penology in the United States* are representative examples of this type of literature. Even more important have been the publications of writers such as Healy, Glueck, Goddard, Adler and others on the subject of the bio-psychic and social factors involved in the causation of criminal conduct and the production of the criminal personality. We have, however, had few books which have attempted to portray and interpret the life of the prisoner as it is actually lived under present-day conditions. Alexander Berkman's *Prison Memoirs of an Anarchist,* and Thomas Mott Osborne's *Society and its Prisons* have been almost the only efforts in this direction. Mr. Tannenbaum's book is a useful addition to the list. As a factual compilation of penal

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legislation and administration it possesses next to no significance, but as a graphic description of the actual operation of American prisons today, with special emphasis upon the manner in which these methods react upon the mental attitudes of the convict and the prison officials, it is probably the most important work which has been brought out in this country in recent years.

Mr. Tannenbaum first considers the problem of prison cruelty. He explains its well-nigh universal prevalence on the following grounds. The prison wardens and guards are not professionally trained, but are usually ignorant and mediocre individuals appointed as a part of the political spoils system for some more or less important service rendered to the local political machine. Though the general theoretical aim of imprisonment may be the reformation of the convict, the primary object of the wardens and guards is successful incarceration. Hence, they regard themselves primarily as jailors, and the whole administrative and disciplinary orientation and organization are determined by this fact. Because of this the chief immediate aim of the prison official is to secure complete and unreasoning obedience to a set of rules for conduct which have no relation to the improvement of the individual but are designed solely to render easier and more successful the task of a jailor. Both officials and convicts deteriorate under the operation of this system, and the result has been the generally vicious and repressive prison administration which has prevailed in the western world during the last century. Not a few, misled by wild statements made by politicians and by occasional irruptions of ill-trained judges, have come to believe that this brutal system has passed in America and that we have gone to the other extreme and are treating convicts as though they were at least a little better than those who have never been adjudged guilty of criminal conduct. In his chapter on "Some Prison Facts" Mr. Tannenbaum thoroughly refutes this nonsense and brings forward convincing evidence to show that even in our so-called "model prisons" we still find in active application such supposed relics of prison barbarism as the ball and chain, whipping-posts, dungeons and padded-cells, and "stringing-up" of prisoners.

Much of the book is devoted to a consideration of substitutes for this conventional and utterly unsuccessful prison system. The author concludes that the prisons, as at present constructed and administered, must be entirely abolished and with them the notion of vindictive punishment as a remedy for crime. In their place must be provided institutions designed to rehabilitate the convicts and

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restore them to society as useful citizens. The desirable system of the future would include differentiated institutions and treatment for the widely varied classes of offenders; thoroughly trained and professionalized prison administrators; medical attention to ameliorate all physical and psychic diseases; an adequate industrial system to make possible trade instruction and decent remuneration; social re-education through the provision of a plan for democratic self-government; and a far more extensive and scientific utilization of the indeterminate sentence and parole. Mr. Tannenbaum's treatment of the psychological effects of Mr. Osborne's plan of inmate self-government is especially interesting and convincing.

Perhaps the only important reservation which the reviewer would desire to make relates to Mr. Tannenbaum's general theory of criminal causation. Like Mr. Osborne and his disciples in general, he seems to regard the criminal as almost entirely the product of an unfortunate social environment. While we do not as yet possess adequate evidence to allow final and dogmatic generalization upon this matter, all the actual scientific studies of criminal populations which have been undertaken have revealed the existence of a large number of convicts possessing a determinate record of insuperable congenital defects. Few believe that inmate self-government will do much for this class. Permanent segregation, sterilization and even painless elimination of hopeless types, must supplement "prison democracy" in the successful prison system which we may aspire to attain at some distant date in the future.

HARRY ELMER BARNES

CLARK UNIVERSITY

The Evolution of World Peace. Essays Arranged and Edited by F. S. MARVIN. Humphrey Milford, Oxford University Press, London, 1921.—191 pp.

"This book," says the preface, "contains the lectures, except that of Professor Gilbert Murray, delivered at the fourth of the 'Unity Schools' held at Woodbrooke in August, 1920. The course was arranged in conjunction with the League of Nations Union and forms a sort of historical introduction to the League. It was felt by those who arranged it that a knowledge of those aspects of history which are treated here is indispensable if we are to have an enlightened public knowledge in support of the League." To a reader alive to the efficacious influences in modern society such discussions as those on "Alexander and Hellenism", on "The Work of Rome", on

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"Innocent III and the Mediæval Church", even on "Grotius and International Law", may seem of doubtful value for the purpose announced. On the whole, they record the failure of internationalism; they make a strong, if unsuspected, *prima facie* case for the ideals of Empire such as were not a little realized in the work of Rome. The unity they plead for, and that is inferred from their subject-matter, appears much more as a desideratum of sentiment than an achievement of will, and the relevancy of the subject-matter to the forces that are likely to make or break the League of Nations as a going concern is a thing still to seek. The inwardness of those forces, whereby the whole civilized world has come to an economic no less than an intellectual interdependence without precedent or parallel, is not even adumbrated by the distinguished scholars who give the historical lectures. It is not touched upon by Mr. Frederick Whelen, who summarized a year's record of the League of Nations. Alone Mr. H. G. Wells, under the rubric "An Apology for a World Utopia", comes to grips with it, and comes to grips by way of an enlightening comparison of the United States of America with the divided States of Europe.

The United States of America, Mr. Wells opines, constitutes a unique modern fact. Its growth, its unity, its uniformity, are due to the railroad and the telegraph. They came just in time to save American unity and to make of many peoples one single people on an unprecedented grand scale; they worked this unification naturally, unconsciously, without let or hindrance. In Europe they encountered resistance. Linking the countries of Europe into concatenated economic interdependencies, they came flat against social, political, linguistic and other boundaries. The scale of social life remained small, pre-industrial, while the scale of economic enterprise grew apace. The difference in scale produced conflict in activity. This conflict must be eliminated, the political and the economic scales must be made commensurate, as in America, if European civilization is to be saved alive. "Europe cannot go on; European civilization cannot go on, unless the net of boundaries which strangles her is dissolved away." Dissolving them away involves an enormous educational effort; Europeans must learn "to think of the civilized peoples of the world." Otherwise they perish by the sword. The educational effort must be concentrated on the teaching of a new history not only to Frenchmen, Germans, English, Irish and Japanese, but to Arabs and Indians and Chinese. The theme of this history must be the unity of mankind and its objective "this

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common idea of the possibility of the World State". An immense job? Yes. An impossible job? No. There are precedents for it in the spread of Christianity in Western Europe, and of Islam from Arabia to Spain in the West and Central Asia in the East. These two religions had only word of mouth to spread by; the idea of a World State has all the mighty engines of communication and propaganda which science and invention have prepared. It can be done; it must be done if the world is to be saved from perdition.

That his enthusiasm for his ideal propaganda should cause the author of the *Outline of History* completely to forget the rôle of the sword in the spread and maintenance of Christianity and Islam, and the sharp contrast between religious professions and social practice in the countries endowed with these beneficent revelations of Providence, is not unnatural. Mr. Wells, when he isn't watching, reverts to confusions of thought about the nature of mind from which many of the perennial obstructions to conscious control continue to derive. He thinks that the establishment of a language habit associated with expansive emotion is sufficient to establish an internationalist habit of life. Nothing could, in the light of history, of the very history Mr. Wells cites, be more absurd. The contradiction between principles—principles are word-patterns—and practice is intrinsic to the whole texture of the social life. An international mind is not to be attained through a verbal formula but by the creation of habits of response in the daily life which will be conditioned by spatially remote elements like Chinese coolies or Russian peasants or Mexican peons or Australian sheep-men. Those men truly have an international mind who, when putting on a pair of rubbers, automatically, reflexly, have a sense not merely of rubbers, but of the railroad which brought them and the factory which fabricated them, and the raw material from which they were fabricated and the ship which brought the raw material and the men who grew and prepared the raw material. The internationally-minded rubber-wearer will not only have a sense of these persons and things but he will have a feeling of dependence upon them and good-will toward them. He will respond to them, *via* his rubbers, as he responds to his family or fellow-workers *via* the exchange of goods and services which his life with them consists of. The purposive creation of habits of response so conditioned is undoubtedly possible. But its focus would need to be the detailed grubby business of living, not the æsthetic pseudo-business of talking, and it would have to begin in infancy. History is secondary to it, not

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primary. Its attainment would involve a radical reform of the whole process of education itself. And there's the rub. Education constitutionally drags behind the event; it neither anticipates nor foresees; it merely reproduces. All the changes in the emphasis and perspective of history that, on the recommendation of Miss Eileen Power, the historian might make, he would be making still as an adjustment of history to an already going alteration in the effective habits of society itself. To render the individual conscious of these is not to teach him history, but to incorporate them into the conditions of his response to the stimuli of his daily life. It is a spatial and causal perspective of the present that he needs, not of the past. To supply him with this is the problem, and this problem is precisely what these benevolent discussions of the unsuccessful evolution of world peace do not solve.

H. M. KALLEN

NEW YORK CITY

Employers' Association in the United States. By CLARENCE E. BONNET. N. Y., The Macmillan Company, 1922.—xi, 594 pp.

Health Service in Industry. By W. IRVING CLARK, JR. New York, The Macmillan Company, 1922.—ix, 168 pp.

Government and Industry. By C. DELISLE BURNS. New York, Oxford University Press, 1921.—315 pp.

Forms, Records and Reports in Personnel Administration. Edited by C. L. HITCHCOCK. Chicago, University of Chicago Press, 1922.—128 pp.

Management, A Study of Industrial Organization. By JOHN LEE. London, Sir Isaac Pitman's Sons, Ltd., 1921.—vii, 125 pp.

Industrial Fatigue and Efficiency. By H. M. VERNON. New York, E. P. Dutton and Company, 1921.—viii, 264 pp.

Practical Psychology for Business Executives. Compiled by LIONEL D. EDIE. New York, H. W. Wilson Co., 1922.—xxvi, 392 pp.

Books which bear helpfully on aspects of the industrial relations problem continue to be published in response to the demand of students and practitioners for specialized studies which subordinate theory to methods and principles to practice. Professor Bonnet has undertaken to fill one conspicuous gap in industrial literature, although Mr. Naylor's book on *Trade Associations* was also recently

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contributed to the same general field. While unquestionably of use, this new volume falls short of being a definitive study. Its material is illuminating—as informative as facts can be which are culled primarily from documentary sources, and this too in a field where written reports and actual activities tend to be quite at variance, either deliberately or because situations are in flux. The more fundamental criticism is that the theme of the book is not clearly seen. The selection of associations to be studied lacks any unifying intention. Any organization the membership of which is predominantly composed of employers comes in for mention. The possibility of any functional basis for the selection of material, or the contemplation of the extent to which the respective associations are characteristic of a type, is hardly considered. A trade association like the National Metal Trades' Association would seem functionally to be of one genus; whereas such a body as the Associated Employers of Indianapolis, composed of employers regardless of industrial affiliations, is surely in a different category and to be judged by different standards. Moreover, in respect to the many activities reported, the author seems wanting in adequate critical sense. He describes all with equal dispassionateness and a lack of relative emphasis which gives the book an almost naïve quality. This may be intentional as evidence of a scientific quality of reporting; but after all the mature student of group activity, especially if he is viewing it functionally, does not leave all evaluation to the reader. Finally, the relative attention given to past and present seems unfortunate, as it gives a somewhat distorted impression of current developments and tendencies. Evidently the author's researches were more active five years before the book came out than one year prior to its publication. Despite these critical comments, however, the volume will prove of great interest and value to the student of industrial institutions and of the balance of power in economic government, as it includes many new facts about the associations discussed.

Dr. Clark's study of *Health Service in Industry* gives us the first small handbook on industrial health methods which is easily available and useful to layman, nurse and doctor alike. He has written out of a wealth of practical knowledge, and a most workmanly and useful volume is the result.

Mr. Burns's treatise on *Government and Industry* is the kind of broad analysis and philosophical consideration of industrial problems in relation to the state and to social welfare which is all too rare in this country. His book has all the easy and adequate assur-

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ance of the English scholar well in command of his subject; and his generalizations will prove of interest to those who find problems of political and economic interrelation significant and who have followed the theorizing in this field by the Webbs, G. D. H. Cole, Wallas, Laski and others. The fact that no American edition of the book is projected indicates the comparative interest on both sides of the Atlantic in speculation on the larger implications and trends of current economic developments.

Mr. Hitchcock has performed a most valuable service for all interested in the technique of personnel administration by assembling good samples of all the many forms and records typically utilized in the personnel work of factories and stores. The specialist will only regret that the volume could not be twice as long and contain more sample forms from which to draw suggestions.

Mr. Lee is another Englishman who, although himself in a managerial position, writes with the wider sweep and tolerance of the mature student of industry. His volume, *Management,* although as yet hardly noticed in this country, is one of the sanest and wisest discussions of management's problems of organization, coordination and personnel supervision which have appeared. Comparable to Mr. Webb's, *The Works Manager Today,* it is a much deeper book in its consideration of the nature of such things as discipline, promotion, morale etc. The greatest value of the study lies, perhaps, in its insistence that an organization is essentially an organization of minds and wills. Every teacher of the science of administration will profitably ponder the many truths in this book, and be the gainer by the adoption of the psychological point of view which underlies all its presentation.

Professor Vernon has now brought together in book form the results of his war studies and subsequent researches. And he has the wisdom to caution the applied scientist at every stage as to the practical results as yet obtained from the study of industrial fatigue. Indeed, he concludes frankly that "for technical reasons it may be almost impossible at any time to secure the evidence [of fatigue] desired, or it may take years to accumulate it." The present study is nevertheless of more than usual practical interest because of its presentation of methodology in this field and because of its interesting chapters on rest periods, limitation of output, the six-hour day, the causation of industrial accidents, etc. Professor Vernon is a careful scientist whose conclusions are to be relied upon because they are so conservatively and judiciously arrived at.

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A conspicuously useful service both to teacher, student and business reader is rendered by Professor Edie's compilation of articles in the psychological field that are of industrial and managerial interest. He seems to have included practically all of the papers of the last few years which a complete collection should contain and his arrangement, if not necessarily growing out of any inner logic, is clear and comprehensive. It is specially interesting to see, after a résumé of all the material, to what a marked extent the psychological diagnosis of the numerous writers comes to the same thing. Again and again it is pointed out (1) that security of employment is an essential attendant condition of a productive attitude of mind; (2) that the present enforced cooperation must in some way give place to a state of mind in which the workers are voluntarily cooperating; (3) that the work process must in and of itself give some satisfaction to the workmen—be truly self-expressive; and (4) that the worker must be assured of a status in society which does not offend his dignity and does not make him feel that he lives in an atmosphere of servility and inferiority. As in so many of the current volumes of compilations, however, each individual excerpt is cut down to extreme brevity. Why cannot articles be reproduced more *in extenso* and thinner paper be used to avoid an unwieldy bulk?

ORDWAY TEAD

NEW YORK SCHOOL OF SOCIAL WORK
NEW YORK CITY

Railroads and Government: Their Relation in the United States, 1910-1921. By FRANK HAIGH DIXON. New York, Charles Scribner's Sons, 1922.—xvi, 384 pp.

Professor Dixon's book is largely an historical review of events and conditions leading up to government operation of railroads, and the transportation results and problems which have developed during and since the war. The narrative is clear and impartial, and very little of the author's text can be controverted by anyone either favoring or opposed to the government's railroad policies. Professor Dixon's close association with railroad affairs just prior to the entry of the United States into the war furnishes him with the proper perspective for approaching the discussion of the problems that have arisen from government war-time operation and control of the nation's transportation facilities. It is this section of the book (The War Period) which opens up a controversial field. Whether the

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railroads were operated efficiently or not during the war period will probably never be known, since the transportation conditions then were without precedent and there is no basis of comparison. Mr. Walker D. Hines, the former Director General of Railroads, delivered an elaborate defense of his administration before the Senate Committee on Interstate Commerce. Railroad executives, on the other hand, have vehemently asserted that the inefficiency and excesses of government management have been responsible for the serious operating and financial conditions in which the transportation companies found themselves immediately following the return to private ownership. Professor Dixon makes no attempt to uphold either party to the controversy. He points out several instances of effective reforms and operating economies introduced by the Railroad Administration. Yet, in his concluding chapter he is inclined to favor the private operation of transportation agencies. This is further indicated in the chapters discussing the Transportation Act of 1920. He offers little in the way of criticism of the new railroad legislation. He fails, moreover, to point out forcefully the fundamental economic fallacy of the rate-making provisions, whereby railroad charges are to be raised or lowered in accordance with the "fair value" of the property investment and the prevailing rate of income return on capital, rather than on a basis that will furnish concurrently a maximum of traffic with a maximum of profit to the carrier. Regardless of the many conflicting railroad-rate theories, the only practical basis of transportation charges under private operation is that which affords a profit both to shippers and to carriers alike. Any other basis will either reduce the volume of traffic or discourage the provision of adequate transportation facilities.

However, as Professor Dixon points out (p. 341), when rates are not sufficiently high to lead to substantial profits to the carrier, the remedy may be sought in reduced operating expenses rather than through increased charges. Further economies in operation, therefore, constitute the principal element in the present "railroad problem". Whether such economies can be produced through more cooperation among the carriers (as proposed by Professor Dixon), through consolidation, or through the elimination of duplicated services and other economic wastes in transportation, is still a large field for research and investigation.

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BOOK NOTES

Lord Bryce's last journey to the United States was undertaken in the summer of 1921 for the purpose of lecturing at the Williams College Institute of Politics. The lectures have now been published under the title, *International Relations* (New York, The Macmillan Company, 1922; xii, 274 pp.), and they will have a melancholy interest for American readers in that they are Lord Bryce's last contribution to political study in the United States. The subjects dealt with include the earlier relations of tribes and states; the Great War and its effects; non-political influences in international relations; the causes of modern wars; diplomacy and international law; popular control of foreign policy; methods of settling international controversies, and other possible methods of averting war. The point of view is conservative, but open-minded; there is no hint of the reactionary, but, on the other hand, there is no suggestion of the original thinker. Lord Bryce was pre-eminently an observer. His vast accumulation of knowledge has rarely been equalled, and in these lectures, as in his other books, he presents facts, arranging and connecting them in a manner which, while not superficial and not mechanical, hesitates, nevertheless, to interpret, to criticize, or to prophesy. The style rarely scintillates, but it is never slipshod. As one of his countrymen said of him: "In an age of vulgarity and advertisement, it is a satisfaction to his friends to look back on a character of such simple dignity and a career of disinterested public service." American students count themselves as fortunate to have known such a character and to have enjoyed the fruits of such a career.

An interesting but cursory survey of recent economic and political conditions in Europe is to be found in Lieutenant-Colonel Charles à Court Repington's *After the War* (Boston, Houghton Mifflin Co., 1922; xv, 477). As a correspondent of the London *Daily Telegraph* the author visited Paris, Rome, Athens, Prague, Vienna, Budapest, Bucharest, Berlin, Sofia and Coblenz. He saw many important statesmen and in his diary reports his interviews with them. Clemenceau, for example, said that he could destroy many reputations with a word, but that he would leave no records for a biography or a history of his share in the conduct of the war. There is also some

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descriptive material of value on the political situation in the new states and on the economic collapse of Central Europe, but to secure it the reader must endure many irrelevancies. Colonel Repington was naturally interested in the excellence of his meals at particular restaurants; his ability to sleep on the trains, and the enjoyable qualities of his matutinal tub, but the interest of his readers is more doubtful. The last pages of the diary deal with the author's impressions of New York and Washington. He was present as a correspondent during part of the Arms Conference, but he discloses nothing of importance.

Whoever persuaded Professor Beard to publish his four lectures delivered at Amherst College in 1916 did a valuable service to the reading public; he may lay no claim to singular prescience, however, for it is obvious enough that a summary statement on *The Economic Basis of Politics* (New York, Alfred A. Knopf, 1922; 99 pp.) by the foremost American exponent of that thesis would find readers everywhere. It is a discussion in general terms and not concerned with the economic basis of any party, past or present. The author begins by summoning to the witness-stand as experts, Aristotle, Machiavelli, Locke, Madison, Webster and Calhoun, and finds them so satisfactory that he can dispense with any extended consideration of Bacon, Raleigh, Harrington, Montesquieu, "and a score of other great men who have speculated upon the origin, nature and fortunes of the state". The constitutions developed in England, France, Sweden, Austria, Prussia, Massachusetts, New York, Virginia etc., all contemplated government by one or more well-marked economic groups. "The governments founded and developed before the nineteenth century were in fact complexes of group interests. Nowhere was the representative system, in its origin, designed to reflect the opinions of mere numerical aggregations of human beings considered in the abstract apart from property and employment." In the United States, however, the abundance of land made these groups less apparent and important. The middle class, growing in power by commerce and feeling itself insufficiently represented, adopted the social contract and equalitarian doctrines. Old groupings were disturbed by the miracles of the steam engine, and slowly universal suffrage was evolved. But this very slightly dulled the consciousness of economic groups, and finally we have the soviet as "a simple and drastic attempt to dispose of the contradiction between political theory and economic facts." This is likely to fail because it seeks to abolish private property, which probably

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cannot be done, and we come out with the cautious and sensible, but rather tame conclusion that "the regulation of these various and interfering interests, whatever may be the formula for the ownership of property, constitutes the principal task of modern statesmen and involves the spirit of party in the necessary and ordinary operation of government." Professor Beard has admirably argued his contention that governments are organized and moved to a considerable extent by economic groups. He would have made his case clearer had he had space to discuss the relative importance of other bases of politics besides economics. What decides, for instance, whether the Bible should be read in schools or lynchings be condoned?

Under the auspices of the Hyde Foundation a series of lectures was given by Professor Garner in 1921 at various French universities. These are embodied in *Idées et Institutions politiques américaines* (Paris, Girard et Cie., 1921; xii, 253 pp.). As the writer states in his preface, this volume is an exposition in elementary form of some of the most significant American political ideas and institutions, with some reference to the differences between the French and American systems. Naturally it was impossible for the author under these conditions to develop critical or constructive views of the governmental institutions he set out to describe so compactly. The chief topics discussed are the constitution, the federal union, political parties, the judicial organization and the foreign policies of the United States. Obvious limitations of space and time prevented reference to our administrative system, to local government and affairs and other subjects commonly included in more comprehensive discussions. As a rule the writer marches straight ahead in his path of description and explanation, but occasionally digresses, as when he declares that the Monroe Doctrine is no longer necessary since the South-American states are now able to take care of themselves. Dr. Garner's volume is a lucid and scholarly exposition of the elements of the American political system, and unquestionably served well the specific purpose for which it was designed, the orientation of French audiences in American political theory and practice.

The organization and procedure of the deliberative agencies of government, such as the legislative and judicial departments, offer comparatively little difficulty to the student of political science. These agencies are fairly uniform and standardized. The administrative agencies, on the other hand, are constantly changing as a government engages in new activities. Consequently it is always

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difficult to get reliable information regarding the organization and functions of administrative bodies. This difficulty is met, with respect to three of these agencies of the federal government, by the recent publication of three small volumes:—*The Tariff Commission* (New York, D. Appleton and Company, 1922; 71 pp.) by Joshua Bernhardt; *The Federal Board for Vocational Education* (New York, D. Appleton and Company, 1922; 74 pp.) by W. Stull Holt; *The Federal Trade Commission* (New York, D. Appleton and Company, 1922; 80 pp.) by W. Stull Holt. These volumes belong to the series of Service Monographs prepared under the direction of the Institute for Government Research. Like the other monographs in this series, they are prepared according to a uniform plan. They give: first, a history of the service; second, its functions; third, its organization; fourth, the character of its plant; fifth, a compilation of the laws and regulations governing its operations; sixth, financial statements showing its appropriations and expenditures; and finally a comprehensive bibliography. The purpose of these monographs is to describe rather than to make a critical analysis. It would seem that in studies of this kind some space might have been given to constructive criticism and suggestions for improvement. However, in preparing these monographs the Institute for Government Research is performing a valuable service. These studies furnish a brief and well-arranged treatment of subjects which are commonly neglected by writers of books on government.

In *Our Changing Constitution* (New York, Doubleday, Page and Company, 1922; xii, 181 pp.) Mr. Charles W. Pierson summarizes the constitutional amendments and the major congressional enactments which the Founding Fathers might not have anticipated, and tells us what the Supreme Court has done about it. He sees us on a road to centralization with many dangers ahead and he bids us stop, look and listen. His continuous overtone of wailing at the expansion of national power is occasionally muffled by acknowledgment that this or that manifestation is justified by the exigency which evoked it. His gentle preference for local self-determination will hardly satisfy the rabid critics of the Prohibition and Suffrage Amendments and it can be faced calmly by those who welcome our recent constitutional adventures with wine and women. His book is too thin and sketchy to call for critical comment, but it can be read with profit by those not already endowed with the information it bestows. The author is accurate and his exposition is clear and painless.

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The third volume of Mr. William H. Spencer's *Law and Business* (Chicago, University of Chicago Press, 1922; xviii, 653 pp.) follows its predecessors in providing a study of cases for courses in schools of business in which the approach is from the practical problems of the business man. The three parts are called "law and risk-bearing", "law and labor", and "law and the form of the business unit".

The Stanhope Historical Prize Essay for 1921 is a compact and excellently constructed little study entitled *The Influence of George III on the Development of the Constitution* (Oxford University Press, Humphrey Milford, 1921; 84 pp.), by A. Mervyn Davies. While the author has delved in the sources—most of them accessible in printed form—he has occupied himself mainly with digesting and coördinating the findings of leading scholars who have, at one time or another, occupied themselves with the period or with the development of the English Constitution. Ample credit, however, is given to all who have been drawn upon by the author. His chief theses are: that George III almost invariably was a stanch supporter of Parliament, but sought to revive the royal ascendancy by securing control of that body; and that, while he delayed the progress of popular government by his adroitness and his obstinacy, he nevertheless, in spite of himself, stimulated the growth of democracy by way of reaction against his methods. Two statements seem to call for qualification or explanation: first, "Walpole had been Prime Minister—in fact though not in name" (p. 28); and second, the first scheme of parliamentary reform was advocated in 1770 by Lord Chatham (p. 52). Apparently the name Prime Minister was applied to Walpole — as a hostile designation — and Sir Francis Dashwood is said to have anticipated Chatham in introducing a measure of parliamentary reform. In the appendix there are inserted a few important letters, of which, as Mr. Davies takes pains to point out, all but possibly one have previously been printed. All in all, this unpretentious little essay should be welcome even to scholars, as an excellent exposition, bringing together in one place and appraising significant information and points of view.—A. L. C.

In a series of lectures now appearing in book form under the caption *Philosophy and Civilization in the Middle Ages* (Princeton, Princeton University Press, 1922; x, 313 pp.) Maurice de Wulf proposes to "relate the philosophy to the other factors in that civilization taken as an organic whole". Since the author is developing the point that ideas cannot be understood apart from the en-

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vironment from which they spring, and that they in turn condition that environment, he prefixes to his more serious discussion several chapters devoted to a brief summary of certain aspects of the history of the period from the tenth to the thirteenth centuries. The treatment is not always happy. It is assumed that the reader is wholly ignorant of the most elementary facts of medieval history, with the result that these chapters are curiously out of balance with the rest of the treatise. There are in the book numerous statements that challenge attention. That there was great freedom of thought and expression in the schools of the Middle Ages (pp. 40, 71), that the equality of all men was insisted upon, slavery and serfdom being merely "conventional" (pp. 55 *et seq.*, 278), that in thought, and in actuality, sovereignty resided in the people—in order to carry conviction, propositions such as these need further elucidation and more proof than the author is here able to marshal to their support. It seems a grave omission, too, that a book which essays to discuss the civilization of a confessedly religious epoch in its relations with the thought of the time should contain no adequate mention of the Church as a factor in that civilization. Finally, when in chapter xiii the author writes of the influence of national temperament upon philosophy, and vindicates for the "Neo-Latin" and "Anglo-Celtic" temperaments a monopoly of scholastic philosophy, urging that one must look elsewhere, notably to Neo-Platonism and Latin-Averroism, for the "Germanic" temperament, the discussion fails to carry conviction. That there may be something in national temperament is conceded, but the strained character of the present generalization is all too apparent in the book itself, and it seems to find little support in his more extended treatment of the same subjects in his *Histoire de la Philosophie médiévale*. But despite these over-hasty generalizations a very real service has been rendered in presenting a distinctly interesting and thought-provoking summary of an important and much-misunderstood subject.

In his *Tudor Ideals* (New York, Harcourt, Brace and Company, 1921; xiii, 366 pp.) Mr. Lewis Einstein ranges over the whole field of sixteenth-century English thought. The volume consists of some forty brief essays, divided into four parts, which deal, respectively, with "The Crown", "The Individual", "Ideals of Life and Thought" and "The Enrichment of Life". As in his earlier study of the Italian Renaissance in England, the author gives evidence of wide learning and critical judgment. Though fragmentary in character, these essays will prove informing and stimulating.

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In *Leading American Treaties* (New York, The Macmillan Company, 1922; 399 pp.) Charles E. Hill, Professor of Political Science in the George Washington University, carries out interestingly his announced purpose of giving "the historical setting and the chief provisions of fifteen of the leading American treaties". The inspiration of the excellent idea underlying the volume is accredited to the late President Angell of the University of Michigan, while the work is more directly the result of the author's own teaching in Washington. The book will be of value to the general reader as well as useful in the class-room. Professor Hill has incorporated enough of the humor and human interest of each situation to hold the attention of the average citizen, who should be more familiar with these bases of our national development. A healthy, but impartial, spirit of Americanism is evident throughout. What the author aptly says of the American commissioners who negotiated the Treaty of Independence may well apply to many of their countrymen participating in subsequent negotiations: "One cannot escape the conclusion that they bore themselves as the peers of the best diplomats of any or all time" (p. 43). A separate chapter is given to a discussion of each of the following treaties, including the events which led up to, and the consequences following, these engagements: Treaties with France, 1778; Treaty of Independence, Paris, 1783; Jay's Treaty, 1794; Convention of Peace, Commerce and Navigation with France, 1800; Louisiana Purchase, 1803; Treaty of Ghent, 1814; Convention of 1818 with Great Britain; Florida Purchase, 1819; Webster-Ashburton Treaty, 1842; Treaty of Guadalupe Hidalgo, 1848; Perry and Harris Treaties with Japan, 1854 and 1858; Alaska Purchase, 1867; Treaty of Washington, 1871; Treaty of Paris with Spain, 1898; and the Panama Canal Treaties. A helpful bibliography is appended to each chapter.

Ernest Hartley Coleridge's *Life of Thomas Coutts, Banker* (London and New York, John Lane, 1920; two volumes: xii, 305; xii, 459 pp.) is of interest not only as a biography of England's greatest banker of the period between Saratoga and Waterloo, but even more as a side-light on political and social affairs in that period. Coutts had as sons-in-law the heirs of two prime ministers and the most famous political reformer of his day—an indication that the gulf between the landed aristocracy and the moneyed men was fast disappearing in England. Coutts was, moreover, the banker of George III and his brood of infamous sons, with all of whom he was friendly. In addition, he was a friend and correspondent of

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Georgiana, Duchess of Devonshire, Pitt, and the famous wit and littérateur, Caleb Whitefoord. He was the trusted adviser of Lord North, and probably knew more of the manipulations of the secret service money than anyone except the king himself, at the time George III was so intent upon wrecking the Old Whigs. The letters shed light upon the attitude of English financiers toward the American Revolution, as Coutts manifested a constant fear that England's credit could not withstand the strain of fighting at one time both her rebellious colonies and France. The banker revealed a real appreciation of the Irish problem and the means for its solution. Napoleon's advantage in threatening an invasion of England was clear to him when he wrote that his "best plan would be forever to make us expect him, but never to come. He might ruin and even conquer us in that way, if we are governed by weak, inefficient Ministers" (vol. II, p. 219). The selecting and editing of these letters is excellent, and we gladly excuse Mr. Coleridge for including several interesting ones previously printed in the *Whitefoord Papers*. Despite the mass of new materials attractively presented, the reviewer confesses disappointment at the lack of information on finance. He hoped for new light upon British taxation during the Napoleonic wars, and above all for concrete data on England's wealth and the means by which it was acquired at the moment the factory system was getting under way. The letters only indicate that Coutts left his widow the wealthiest woman of the realm, but neither her birth nor her wealth was any bar to her marrying the Duke of St. Albans. The work is remarkably free from even trivial errors. Shelburne's name contains no "o"; Cornwallis surrendered Yorktown in 1781 and not a year later (vol. I, pp. 127, 141).

In lifting the cloud which has settled down over Syndicalism since 1912, M. Maxime Leroy has performed a most valuable service, and one sorely needed because of the rapid changes in the movement during the past five years. In spite of its title, *Les Techniques nouvelles du Syndicalisme* (Paris, Librairie Garnier Frères, 1921; 209 pp.), deals with practically every phase of the modern Syndicalist movement. The author uses *"technique"* in its widest sense and consequently discusses not only the methods by which the C. G. T. can achieve its program, but carefully considers its aims as well. True to the Syndicalist tradition, however, these aims are never considered apart from the technic by which they may be realized. Those who abhor the older conception of Syndicalism as typified by Sorel's praise of violence, will find some comfort in the

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slight stress which is put on the time-honored tactics of sabotage and the general strike. The principal object of Syndicalism (the decentralized control of industry by labor) may be better secured, the author contends, by propaganda, demonstrations, education, and even by coöperating with the government. But more important than these methods is the development of plans for the gradual assumption of labor control. It develops, therefore, that the chapters on the "Administration of Production" and "Industrial Nationalization" hold the key to the present-day syndicalist movement, as the author views it, for in them are developed the necessity of including technicians and skilled administrators in the organization of the movement, and certain concrete proposals for the joint control of industry during the period of transition. While the syndicalist of a decade ago looked toward a catastrophic general strike as the dawn of the new day, M. Leroy sees the period of transition already upon us. The encouragement of economic and sociological studies by the C. G. T. shows the trend of the movement. The legalizing of that organization will force it to coördinate itself more closely with the established state agencies. The establishment of the *Conseil économique du Travail* is an important step in the direction of a labor-controlled industrial society. In short, the author feels that labor is just coming into its own, and he hopes by concrete practical suggestions to point out the road which it should take in the future. Even if the future is not as bright as one would think from the graphic description of the author, he has performed a most useful service in summing up the aims and methods of conservative Syndicalism as it has developed in the last decade.

Students of the ever-living problem of the railroad in this country will find much of interest in the form and workings of the "new régime" in France, inaugurated by the recent adoption of the much-discussed railway law. A well-rounded survey of the new Convention, its antecedents and salient features, is presented in a brochure by M. André Bosc, entitled *Le Nouveau Régime des Chemins de Fer* (extract from *La Revue de Science et de Législation Financières*, January–February–March, 1922, Paris, Marcel Giard, 1922; 71 pp.). M. Bosc has confined his treatment, probably through limitations of space, to an analysis of some of the contributory causes of this new economic adjustment and a survey of the document itself. Throughout his study M. Bosc partakes of the optimism evinced by the Minister of Public Works (who framed the Bill) and of the publicity departments of the private roads. The measure

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is undoubtedly a reform suited to the particular needs of the nation, whose railway problem is unique, due to the admixture for forty years of control by the state and by the private roads; as the writer points out, it cannot but inaugurate an era of coöperative development that must inevitably supplant the particularist attitude of the private roads, heretofore always in evidence. But in the machinery of the new law there is much that is dangerous, and this M. Bosc fails to see. The delegation of relatively regal discretionary powers in the administration of the railway system to the Ministry of Public Works, a political department subject to periodic changes of personnel, is a mistake. Criticism may be levelled, too, at the plan whereby financial burdens will practically be saddled on the public treasury for the next six years and after that on passenger traffic, in the nature of adjustable tariffs to be sensitized to fluctuations in the earnings of the railroads, rather than the law of supply and demand. M. Bosc mentions the latter defect but he minimizes its importance. However, the law is yet in its rudimentary stages and certainly represents thoughtful and sensible preparation. The brochure is invaluable as an accurate exposition of the "new régime" as it has begun to function. Valuable footnotes and the inclusion in the appendix of the provisions of the Bill itself, contribute to the interest and authority of the work.

In *The Evolution of Industrial Freedom in Prussia, 1845-1849* (New York, University Press, 1921; vi, 114 pp.), Professor Hugo C. M. Wendel has surveyed a small section of an interesting and important phase of the economic development of modern Europe. The industrial liberty instituted in Prussia by laws of 1810, 1811, and 1820 was far from being approved by the old craft-guilds, and as a result of pressure which they brought to bear a law was finally passed in 1845 which aimed to establish a uniform system of industry in all of the provinces of the kingdom, on the basis of a compromise between industrial freedom and state control. The new measure, however, failed to please those for whose relief it was devised, and in 1849 another law was enacted, on lines decidedly reactionary and favorable to the guilds. Only in 1869 was a more enlightened policy again adopted—a policy which, shortly afterwards, was introduced in the south German states, thus becoming general throughout the new Empire. Recognizing that Prussian craft-guild legislation down to 1845, and again after 1869, has been adequately treated by von Rohrscheidt and Roehl, Professor Wendel has confined his monograph to an analysis of the law of 1845 and its effects, the policy

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of the government resulting from the petitions and protests of 1847-48, and the connections between the industrial problem and the revolutionary movement of the last-mentioned year. The book shows careful study of the extensive literature of the subject, and the results are of considerable value, principally for the light which is shed upon the economic conditions attending the revolution of 1848 and the efforts of the government to meet the problems raised thereby. The power of the guilds in mid-century Prussian society, as seen in the promulgation of the law of 1849, is strikingly brought out. The study is well documented, and there is an ample bibliography.

A considerable amount of very valuable information and critical comment respecting the present status of English agriculture and of English agricultural life can be found in Sir Henry Rew's interesting volume entitled *The Story of the Agricultural Club, 1918-1921* (London, P. S. King and Son, Ltd., 1922; xv, 205 pp.). During the course of the Great War the British Government created an Agricultural Wages Board composed of sixteen representatives of farmers, sixteen representatives of farm workers, and seven others appointed by the Minister of Agriculture. Out of this body there developed an agricultural club with a membership drawn from the three groups particularly interested in English agriculture—the landowners, farmers and laborers. And it is the story of this club, of its meetings and of its discussions, that the author relates. It is more than a mere record, however, for throughout the volume Sir Henry has given his own opinion regarding some of the more important problems facing rural Britain today. The seventeen chapters comprising the volume are of varying merit, but those dealing with agricultural economics, agrarian politics, nationalization of the land, ownership and tenancy, and the worker's home and his share in the profits of the agricultural enterprise are sources of information which no student of present-day English society can afford to ignore.

The facts on wage and price changes in the United Kingdom during and immediately following the World War are very compactly presented by an eminent authority, A. L. Bowley, in *Prices and Wages in the United Kingdom, 1914-1920* (London, Clarendon Press, 1921; xx, 228 pp.), prepared for the Carnegie Endowment for International Peace, as one of a series of volumes on the Economic and Social History of the World War. Leaving to other volumes in the series the discussion of reasons for particular regulations and methods of administration, Dr. Bowley's treatment "deals with re-

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sults, not with causes". In Part I the student will find comprehensive details of wholesale and retail prices covering most of the readily available quotations for food and materials. Various index numbers are presented and their relation to the cost of living is discussed. Part II presents in convenient form a well-organized mass of wage data for various industries, i. e. Building, Iron and Steel Manufacture, Coal Mines, Railways and Docks, Agriculture, Cotton and Wool. For the most part it is a collection of facts. In chapter i the change in wholesale prices is summarized; in chapter iv the same is done for retail prices and cost of living; and in chapter vii the author compares cost-of-living changes and wage changes. A final chapter is devoted to women's wages. An excellent brief summary of the entire volume is given on pp. xvii-xx. The author concludes that "the growth of rates of wages generally lagged behind that of prices, but earnings, in those very numerous cases where piece rates or overtime work gave facilities for additional work and pay, increased more rapidly than prices from the outbreak of the War to the Armistice". During 1919 and 1920 wages and prices continued to rise. "There can be no doubt that some sections of the working classes, especially the worst paid, were better off in the summer of 1920 than before the War, and it is probable that other sections were worse off. It is not possible to decide whether the average of all wages, measured in purchasing power, had risen or fallen." War conditions gave rise to various schemes of wage determination. Students of the labor problem would find most valuable a critical evaluation by Dr. Bowley of the various methods of paying bonuses and of the sliding scales adopted during the War, as compared with the method of conference between employers and employees. This the book does not attempt to do.

A brief treatment of the Mexican railroad situation, covering the Diaz administration and the time up to the Carranza régime, with an historical sketch of each of the principal railway lines in Mexico, is given by Fred Wilbur Powell in *The Railroads of Mexico* (Boston, Stratford Company, 1921; 226 pp.). The value of the book to those who would understand the railway and other industrial problems of Mexico is unquestionable. The author has evidently done much hard work in digging out material very difficult of access and given it to the reader in a well-organized way. To present a clear statement of how the revolution has affected the railroads and allied interests and show the way out is so difficult that to criticize the author's achievement too severely would be most ungracious. It is unfortunate

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that the book does not bring the situation down to date. The value of the book as describing the present situation has been greatly reduced by the many changes since the Carranza régime, both in improved conditions in Mexico and the arrangement of the Mexican debt, through an agreement with the International Banking Commission in New York in June, 1922.

The Mexican Mind (Boston, Little, Brown and Company, 1922; 303 pp.) by Wallace Thompson may be regarded, the author modestly affirms, as a humble beginning of a task to which many minds and many years should be devoted — the comparative study of the psychology of the Latin and Saxon people of America. The author is to be congratulated for being willing to tread this untrod and exceedingly difficult path, with his limitations of equipment. His descriptions of customs and of play-life, his emphasis upon the individualism, pride and inertia as important psychological traits, and his insistence that the whole "Mexican question" is one of education, — are valuable and true points. His stress on the necessity of adapting education to the Mexican mind is also important. There are many good paragraphs and pages scattered through the book. But the book as a whole is bad. While the author has lived in Mexico many years, he has evidently never sympathized—*suffered with*—the Mexicans. As a foreigner and a newspaper man he has met the governing classes and the serving classes in the capital city and probably been entertained in some large *haciendas* and Indian villages. But he would hardly have written this book if he had really lived with the people. The author bases his whole analysis of the Mexican mind on the belief that it is entirely Indian. And then he makes this remarkable statement: "The Indian culture, if we may so use the term, is perhaps the most sinister threat against the civilization of the white man which exists in the world today." The Yellow Peril, then the Moslem Peril, and now the Indian Peril! The author seems to enjoy turning out books on Mexico. This is the third one in the last two years, the others being *The People of Mexico* and *Trading with Mexico*. One of these at least is the result of Mr. Thompson's work on the Doheny Foundation, which was endowed by the oil magnate's generosity to study Mexican Problems but came to grief and was soon abandoned.

Some time ago in discussing the difficulty of selecting a title for a book, a publisher pointed out that one of the pitfalls to be avoided was a misleading title. The title chosen by the authors, William F. Notz and Richard S. Harvey, for the book under review, *American*

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Foreign Trade (Indianapolis, The Bobbs-Merrill Company, 1921; xv, 593 pp.), would seem to indicate a discussion of American export markets and methods. We learn, however, from the subtitle that the book actually is concerned with "American Foreign Trade as promoted by the Webb-Pomerene and Edge Acts with Historical Reference to the Origin and Enforcement of the Anti-Trust Laws". This historical reference to the anti-trust laws fills the first 110 pages. We then discover that we must read another thirty-four pages concerning combinations of industries in various countries before we come to the discussion of the Webb law. Parts IV and V are given over to the discussion of the Webb-Pomerene and Edge Acts. Part VI considers "Compacts in World Commerce". Aside from the "historical reference", the method of presentation in much of the book is a quasi-legal discussion phrase by phrase of the meaning of the law as interpreted by various court cases with the authors' comments scattered in between the reports of cases. An appendix contains the text of the laws as well as certain forms and agreements which have been used in connection with the Webb-Pomerene and Edge Acts. In their preface the authors state that the information presented has been scattered among many sources and consequently it has been "inaccessible to the business man, the lawyer, librarian, banker, exporter, or to the student". The accessibility of the material has been advanced one step by being included between the covers of one book. The lawyer prefers simply statements of the conditions of the cases tried in the courts under the law with footnotes referring to the cases themselves. The business man wants a brief, concise analysis with a clean-cut distinction between proven fact and suggestive possibilities. Either type is helpful to the student. But in this book answers to many questions still must be dug out from the material as presented. Thus it seems to the reviewer that the discussion in many parts of the book could be cut down with profit and that the style of writing lacks the definiteness which is so essential in a work of this kind. It should be added in all fairness that there are certain sections of the text to which this criticism does not apply, as they are ably written.

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